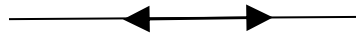


12-2297pr

To be argued by:
D. B. KARRON

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 12-2297



DANIEL B. KARRON,

Petitioner - Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX Volume 10 FOR THE PETITIONER - APPELLANT

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869zkar1

Benedict - direct

1 MR. EVERDELL: Yes.

2 THE WITNESS: Yes, sir.

3 MR. RUBINSTEIN: I object to Gurfein.

4 THE COURT: Objection sustained.

5 Q. Was that the only call you received asking your advice on
6 spending related questions?

7 A. No, sir. I received maybe three other phone calls from Dr.
8 Karron, as well as Mr. Gerfein, and basically they were all
9 asking the same questions, how do I get the rent covered in the
10 ATP grant.

11 Q. And what was your response on all those occasion?

12 A. All those occasions it was the same response; if it's not
13 in the budget, you have to go get an ATP budget amendment and
14 ATP authorization to include it.

15 Q. Did you tell him whether rent was generally included as an
16 allowable expense?

17 A. No, it's an indirect expense and it's not usually allowed
18 in a single grant.

19 THE COURT: Did you tell him that?

20 THE WITNESS: Yes, sir, I did.

21 Q. And approximately when did these phone conversations
22 happen?

23 A. They happened every three or four months during 2000, the
24 end of 2001 and 2002.

25 Q. Did you give the defendant or Lee Gerfein any general

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869zkar1 Benedict - direct

1 advice about spending ATP funds during these conversations?

2 A. Do what's allowed in the budget.

3 Q. And did you recommend that they do anything in particular
4 to familiarize themselves with the rules?

5 A. Yes, sir, I did. I gave them the catalog for management
6 concepts, which is an organization that does granting education
7 for both funders of grants and receivers of grants. I told
8 him -- I gave him their website, I gave him the catalog and I
9 suggested that they go get the education.

10 Q. To your knowledge, do you know if the defendant or anyone
11 on his staff ever got the education that you were requesting?

12 A. Not to my knowledge, no.

13 Q. How do you know that?

14 A. Well, when I became employed with ATP, I discussed this
15 with Dr. Karron, and he said he did not know that.

16 Q. I'm sorry, he said employed --

17 THE COURT: Employed with ATP?

18 A. I mean with CASI. Dr. Karron said he did not do that.

19 Q. Did there come a time when you became more involved in the
20 CASI ATP grant?

21 A. Yes, sir.

22 Q. And how did you become more involved?

23 A. I had finished my consulting work with IBM at the end of
24 2002, and received a call from Dr. Karron, who indicated that
25 he was not getting what he needed from his ATP administers and

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869zkar1

Benedict - direct

1 was wondering if I would come to work for him as the grant
2 administrator.

3 Q. When did he call you to do -- to ask you that?

4 A. That was December 2002.

5 Q. And did he say why he wanted to hire you?

6 A. Because I had grant administration background.

7 Q. Did you accept the job?

8 A. Yes, sir, I did.

9 Q. What was your understanding of what your job
10 responsibilities would be at CASI?

11 A. My job, as I understood it, my job responsibilities would
12 be to administer the grant that he had, which was a single
13 grant, would require my looking at the books assuring all the
14 expenditures were allowed by the grant, and that the reports --
15 and get the reports filed to ATP.

16 Q. How long did you work for CASI?

17 A. I worked for CASI for about eight months.

18 Q. So that's roughly until when?

19 A. August --

20 Q. Of?

21 A. 2003.

22 Q. And were you paid anything for this job?

23 A. Yes.

24 Q. What?

25 A. \$60 an hour. I worked 20 hours a week.

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869zkar1

Benedict - direct

1 Q. Did you have any particular task concerning the budget when
2 you started working at CASI?

3 A. First thing Dr. Karron wanted me to do was to submit a
4 budget amendment. I believe at the time what he was trying to
5 do was move money from --

6 THE COURT: Just what he told you.

7 THE WITNESS: Pardon.

8 THE COURT: Just what he told you.

9 THE WITNESS: He told me to do a budget amendment to
10 move money from the salary line in his grant, to the equipment
11 line in his grant, because he needed additional equipment for
12 the project.

13 Q. Do you know what sort of equipment he wanted to buy?

14 A. No, sir, I don't.

15 Q. What facets of the budget --

16 THE COURT: Particular year?

17 THE WITNESS: Pardon?

18 THE COURT: What year of the grant are you referring
19 to?

20 THE WITNESS: I'm referring to the year 2003.

21 Q. So that would be the second year?

22 A. Yes.

23 Q. What facets of the budget revision did you work on?

24 A. I worked on doing the budget amendment, I got the financial
25 numbers lined up, as he had requested, and was ready to submit

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Benedict - direct

1 the budget amendment, but Dr. Karron added a significant number
2 of technical supporting documentation to the amendment. I
3 advised he didn't need that data; that the budget people were
4 not going to be interested in it; it wouldn't mean anything to
5 them; they wouldn't read it, and it would slow down the
6 process. He told me that that's what they like. And we
7 included that when we submitted the budget amendment.

8 Q. At the time, to your knowledge, was this the first budget
9 revision that CASI submitted?

10 A. To my knowledge, sir, it was.

11 Q. And what led you to believe that?

12 A. It was -- there were no budget amendments numbered prior to
13 the one that I submitted.

14 Q. Did you learn later whether this was in fact the first
15 budget amendment?

16 A. No, sir, it was not. There were numerous other budget
17 amendments submitted prior to my getting to CASI.

18 (Continued on next page)

19
20
21
22
23
24
25

8697KAR2

Benedict - direct

1 BY MR. EVERDELL:

2 Q. Were those in year one of the grant?

3 A. One and two, as far as I understand.

4 Q. Did you receive a response from ATP on the proposed budget
5 amendment that you worked on?

6 A. No, sir, we did not.

7 THE COURT: When did you file it?

8 THE WITNESS: Filed it in January 2003.

9 Q. So, was it approved?

10 A. No, it was not, not to my knowledge.

11 Q. Did you ever visit the site where CASI was conducting its
12 research?

13 A. Yes, I did.

14 Q. Where was that?

15 A. It was in Manhattan on 33rd Street, I believe, East 33rd.

16 Q. Was that an apartment or an office?

17 A. It was an apartment/office. There was a kitchenette, a
18 bathroom and a bedroom intact, and the rest of the apartment
19 had been gutted and turned into a software development lab. It
20 had tables that ran both sides of the main room, with computers
21 on both sides.

22 Q. And whose apartment was it?

23 A. Dr. Karron's.

24 Q. When did you first go there?

25 A. January 2003.

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8697KAR2

Benedict - direct

1 Q. Why did you go to the apartment?

2 A. I went to the apartment to look at the financial records
3 and to submit the quarterly report for the fourth quarter of
4 2002.

5 Q. Why did you need to prepare a quarterly financial report?

6 A. It's required by the ATP grant.

7 Q. What material did you look at in order to prepare the
8 report?

9 A. I looked at the Quick Book files, which is the accounting
10 system used by CASI, and determined that we could not file the
11 report based on the data that was in those records.

12 Q. Well, what, if anything, did you notice when you were
13 looking at the books of CASI?

14 A. I noticed that all of the funds were commingled, which is
15 not allowed by ATP.

16 MR. RUBINSTEIN: Objection. Move to strike, your
17 Honor.

18 THE COURT: Disregard the part "which is not allowed
19 by ATP."

20 Q. Just to clarify. You said you noticed the funds were
21 commingled, is that right?

22 A. Yes, sir.

23 Q. We will get to that in a second. What else did you notice?

24 A. I noticed that there were no documented procedures of any
25 kind identifying how the accounting records were to be treated

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8697KAR2

Benedict - direct

1 or how the benefits package was to be administered.

2 Q. Did you notice anything else? Who had control of the books
3 and records?

4 A. Dr. Karron had all control of all the documentations.
5 There were no separations of duties.

6 Q. OK. Let's take those one at a time. So you mentioned
7 written procedures.

8 A. Yes, sir.

9 Q. Or lack of written procedures. Can you explain what you
10 meant when you said there were no written procedures.

11 A. In a normal business environment you would have procedures
12 that tell you when to pay bills, what bills to pay, how to
13 treat checks as they come in, where to deposit them. There was
14 nothing written of any kind.

15 Q. And why do you have those procedures in place normally?

16 A. So you can ensure a consistent operation within the
17 financial realm.

18 Q. Did you discuss the lack of Written procedures with Dr.
19 Karron?

20 A. Dr. Karron said that their business was so small, he knew
21 what to do and he didn't need to spend time doing written
22 procedures.

23 Q. Were written procedures ever instituted while you were
24 working at CASI?

25 A. They were not as far as I know. I know that we spent some

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Benedict - direct

1 time trying to buy a handbook, an employees handbook, and spent
2 some time talking to people to do an HR, human relations or
3 human resources manual, but that was primarily done by Joan
4 Hayes.

5 Q. You mentioned also commingling.

6 A. Yes, sir.

7 Q. Can you explain what you mean by the funds were commingled.

8 A. Commingling is when you are taking the grant money, and you
9 are putting it in the same accounts as nongrant money.

10 Q. And what if anything did you notice about the books at CASI
11 with respect to that?

12 A. They were all together.

13 Q. What do you mean they were all together?

14 A. All the monies were together, all the expenses were
15 together. There was no separation, so you could not tell what
16 money was spent on ATP project versus what money was being
17 spent on other projects.

18 Q. Did you have any discussions with the defendant about this
19 issue?

20 A. He did not seem to be very interested or very concerned
21 about that.

22 THE COURT: No, just answer.

23 A. Yes, sir, I did.

24 Q. What did you tell him?

25 A. I told him he could not do that, and I requested that they

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Benedict - direct

1 separate the books.

2 Q. And what do you mean by separate the books?

3 A. Separate the books so that we could tell what was ATP
4 spending and income versus what was not non-ATP spending and
5 income.

6 Q. And what was the defendant's response to that?

7 A. He agreed to have the bookkeepers do that.

8 Q. Were the funds in fact separated out?

9 A. Not before I left. They were working on it, but they never
10 completed it.

11 Q. Could you tell what sources of funds the CASI was receiving
12 funds from?

13 A. Initially I could not, but over time it became apparent
14 that the only income coming in was the money coming in from
15 ATP.

16 Q. Did you see any other source of income besides the ATP
17 funds?

18 A. No, sir, I did not.

19 Q. You mentioned lastly the control of the books.

20 A. Yes, sir.

21 Q. Can you explain what you mean by that.

22 A. Normally in an accounting operation there is a check and
23 balance. You can have one person write checks, someone else
24 has to sign them. Dr. Karron had complete control of
25 everything. He wrote the checks, he signed the checks, he

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Benedict - direct

1 controlled the checkbooks.

2 Q. And over time did you notice anything else about Dr.

3 Karron's control of the books that raised an issue in your

4 mind?

5 A. Yes, sir. While we were trying to separate the books, the

6 bookkeepers would make changes to the books and separating them

7 and calling certain expenditures CASI expenditures, certain

8 expenditures ATP expenditures. Dr. Karron would --

9 MR. RUBINSTEIN: I object to this, your Honor, unless
10 he has personal knowledge.

11 THE COURT: Objection sustained unless it's shown that
12 this witness had personal knowledge of the facts and hadn't
13 heard them from bookkeeping.

14 Who were the bookkeepers at the time?

15 THE WITNESS: The Jackson group, Frank Spring.

16 Q. Did you have any discussions with the defendant about this
17 issue that you are talking about?

18 A. Yes.

19 Q. What were the nature of those discussions?

20 A. The discussions were Dr. Karron had changed entries that
21 the Jackson group had made, and Dr. Karron said they just
22 didn't know what they were doing and he knew where the
23 expenditures needed to be.

24 Q. What if anything did you try to do to address these issues
25 that you noticed with respect to control of the books?

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Benedict - direct

1 A. The first thing we did was we no longer gave Dr. Karron
2 transaction capability. He could see, read the accounting
3 records, but he couldn't make any changes to the accounting
4 records.

5 Q. When did you make that change?

6 A. I made that change in the April time frame, I believe.

7 Q. Of which year?

8 A. 2003.

9 Q. And how did you achieve that?

10 A. We basically stopped giving him a writable copy of Quick
11 Books.

12 Q. Who had control of the Quick Books after you did that?

13 A. Frank Spring.

14 Q. And did you do anything else with respect to this issue to
15 remedy it?

16 A. Yes, sir, we met with his board.

17 Q. When you say his board, you're referring to --

18 A. The CASI board. Frank Spring and I met with the CASI board
19 and told them of our concern with him having total control of
20 the checkbook, and asked that they take the checkbook away from
21 him, and they directed him to turn the checks over to Frank
22 Spring and to no longer write checks.

23 Q. When did that happen?

24 A. That was in the June time frame, I believe in 2003.

25 Q. Did you ever have check writing authority yourself?

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8697KAR2

Benedict - direct

1 A. No, sir.

2 Q. Did Dr. Karron abide by this restriction that he couldn't
3 sign checks anymore?

4 A. No.

5 MR. RUBINSTEIN: I object to that. The testimony is
6 not signing checks.

7 THE COURT: Sorry?

8 MR. RUBINSTEIN: There is no testimony that he
9 couldn't sign checks that I heard.

10 THE COURT: Well, I haven't heard that, but writable
11 authority of Quick Books as I understand it. I'm not going to
12 testify. I'm not testifying.

13 Q. Just so we're clear, Mr. Benedict --

14 THE COURT: Disregard my comment.

15 Q. Can you explain what action the board of directors took
16 with respect to Dr. Karron?

17 A. The board of directors told Dr. Karron to turn all the
18 checks over to Frank Spring and that Frank would print checks
19 and give them to Dr. Karron to sign.

20 THE COURT: Under the Quick Books?

21 THE WITNESS: Under Quick Books.

22 THE COURT: Quick Books is the manner in which checks
23 were written?

24 THE WITNESS: Yes, sir, Quick Books is the accounting
25 system that both writes checks and makes deposits.

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Benedict - direct

1 Q. Do you know whether or not this was the only way that
2 checks got signed and paid after this restriction was put in
3 place?

4 A. No, it was not.

5 Q. Can you explain.

6 A. Dr. Karron used PayPal, which for all intents and purposes
7 subverted the direction provided by the board.

8 MR. RUBINSTEIN: Objection. Move to strike subverted.

9 THE COURT: Objection sustained. That's a conclusion
10 of yours. Just tell us what happened.

11 A. PayPal is a service that allows you to use your credit card
12 to pay bills, and Dr. Karron used the CASI credit card and had
13 PayPal pay bills that did not go through Frank Spring.

14 THE COURT: Does PayPal have check writing capability?

15 THE WITNESS: Yes. PayPal, you use your credit card,
16 you give the credit card to PayPal, PayPal charges your credit
17 card and then pays the bill, so PayPal actually writes the
18 check.

19 THE COURT: Writes the check for the payment of the
20 bill?

21 THE WITNESS: Yes.

22 THE COURT: To whatever credit card it is?

23 THE WITNESS: No, to whatever vendor you want the bill
24 to go to.

25 THE COURT: To whatever vendor.

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Benedict - direct

1 Q. How did you know that the defendant was using PayPal?

2 A. We saw the PayPal charge on the American Express credit
3 card bill.

4 Q. Did you discuss this with the defendant?

5 A. Yes, sir.

6 Q. What if anything did you say to him?

7 A. He said he had to pay the bills.

8 Q. Now, Mr. Benedict, in the course of reviewing CASI's books
9 and records, were there any particular expenditures that you
10 noticed?

11 A. Early on there was a \$75,000 payroll advance.

12 Q. To who?

13 A. To Dr. Karron. There were payments for rent. There were
14 payments to an employee that I did not know and actually never
15 met. And there were some medical charges.

16 Q. OK. And what did you notice about these expenditures in
17 particular?

18 A. They were either not allowed by ATP or they would be
19 questioned by ATP.

20 Q. All right. Let's take them one at a time. You mentioned
21 rent payments that you noticed.

22 A. Yes.

23 Q. Can you explain what you noticed about rent payments.

24 A. Rent payments were being made with ATP funds, and rent is
25 not in the budget so are not allowed by ATP. They would be

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Benedict - direct

1 disallowed costs.

2 Q. Did you talk to the defendant about this issue with rent
3 payments?

4 A. Yes, I did, and as I said before he said, "I have to pay
5 the bills." And on another occasion he said, look, if I don't
6 pay the rent, I'm going to be out on the street and I can't do
7 anything for the grant then, so they ought to understand that.

8 Q. Did he mention anything else with respect to what he
9 planned to do about the rent payments?

10 THE COURT: These are current rent payments?

11 THE WITNESS: Yes.

12 A. He said that he was going to move to Connecticut and that
13 he would convert the entire apartment to a place of business,
14 he would turn his bedroom into an office. However, none of
15 that actually happened.

16 Q. What if anything did you tell him when he told you about
17 this Connecticut plan?

18 A. I told him it wouldn't matter anyway because the rent was
19 not going to be allowed by ATP.

20 Q. All right. Let's talk about the employee, the charges to
21 the employee that you didn't know. Do you recall what those
22 charges were for?

23 A. As explained by Dr. Karron the charges were for an
24 individual to scan data into his database. The process was
25 that invoices and other data relevant to the CASI business

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8697KAR2

Benedict - direct

1 would come into the office, the data would be scanned into a
2 program called I believe Paper Port, and then the original
3 document would be shredded.

4 Q. Did you have any discussions with the defendant about those
5 charges?

6 A. Those charges are not in the budget, they are not relevant
7 to the performance of the grant, so they would not be allowed.

8 Q. What was his response?

9 A. Again he said he had to pay the bills.

10 THE COURT: What sort of documents are you talking
11 about?

12 THE WITNESS: All documents, original invoices,
13 letters, everything was scanned into this system called Paper
14 Port.

15 THE COURT: Didn't they have backup for bills?

16 THE WITNESS: No, they shredded everything.

17 THE COURT: What period of time was this?

18 THE WITNESS: While I was there from January until
19 August 2003.

20 THE COURT: When did this particular event take place
21 that you learned about shredding?

22 THE WITNESS: I was there when he was doing it. Dr.
23 Karron's view was that he was running a paperless office and
24 that he could find any data or any documents he needed to find
25 in Paper Port, he didn't need originals.

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8697KAR2

Benedict - direct

1 THE COURT: And what do you call this computer system?

2 THE WITNESS: I think it's called Paper Port.

3 THE COURT: So it would be reflected though in the
4 computer.

5 THE WITNESS: Yes.

6 THE COURT: The transaction would be.

7 THE WITNESS: Yes, the documents would be there.

8 THE COURT: In computer form.

9 THE WITNESS: In computer form.

10 THE COURT: Retrievable, but the originals would be
11 shredded --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- because of storage problems or
14 whatever.

15 THE WITNESS: Yes.

16 Q. Did you ever try to access the documents on Paper Port?

17 A. I did. It was difficult.

18 Q. What do you mean by difficult?

19 A. The data would be filed in numerous places. You could find
20 the data. For example, if you were looking for a vendor, you
21 could find the data by the date that it was submitted or
22 entered into the system, you could find it by the vendor, but
23 some of the data had comments on it. The same invoice stored
24 in another place didn't have those comments on it, so you could
25 never tell what the source document really was.

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8697KAR2

Benedict - direct

1 Q. All right. You mentioned medical expenses as well, right?

2 A. Yes.

3 Q. What did you notice about the medical expenses?

4 A. In a traditional business you have a fringe benefits
5 package that's associated with paying a health care provider
6 like Blue Cross/Blue Shield or Humana or United Health Care,
7 any one of those types of providers. In CASI's case the
8 medical expenses were all paid directly to a medical provider,
9 a doctor, a pharmacy, something, and as such every medical bill
10 would be questioned.

11 Q. What do you mean by that?

12 A. They would want to look at every medical bill and want to
13 know exactly what every medical bill was used for.

14 THE COURT: Who is they?

15 THE WITNESS: ATP.

16 Q. Did you have any conversations with the defendant about
17 this medical benefits issue?

18 A. Yes. Dr. Karron's view was --

19 MR. RUBINSTEIN: I'm going to object as not relevant
20 in view of your Honor's instruction.

21 THE COURT: This doesn't go to the nature of the
22 expenses. You are instructed not to --

23 MR. RUBINSTEIN: Then I will withdraw the objection.

24 THE COURT: -- get into the nature of the expenses.

25 A. Dr. Karron just said he had the fringe benefit money in his

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Benedict - direct

1 grant and that he was under his fringe benefits budget, so he
2 could use his fringe benefit expenditures.

3 Q. Do you know whether a written benefits policy is required
4 in the ATP rules?

5 A. I do not think so.

6 THE COURT: You do not think what?

7 THE WITNESS: That there is a specific requirement
8 that you have a health benefit plan. I don't know of any such
9 guideline in ATP.

10 THE COURT: In connection with this grant? Did you
11 examine this grant's --

12 THE WITNESS: No, sir, I did not.

13 Q. Let's talk about the \$75,000 payment that you mentioned
14 before.

15 A. Yes, sir.

16 Q. Who is that payment to?

17 A. Dr. Karron.

18 Q. And when did that payment occur?

19 A. Right after he drew down the first money from ATP.

20 Q. Did you have any discussions with Dr. Karron about that
21 expense?

22 A. Yes. I told Dr. Karron that payroll advances were not
23 allowed by ATP grants, and he said that he would pay the grant
24 or pay the payroll advance back.

25 Q. To your knowledge, did the defendant ever pay back the

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Benedict - direct

1 salary advance?

2 A. No, sir.

3 Q. In general what did Dr. Karron do with your advice
4 concerning expenditures?

5 A. My experience was if it fit what he wanted to do, he
6 accepted it; if it conflicted with what he wanted to do, he
7 ignored it.

8 Q. What ultimately happened to CASI's ATP grant?

9 A. The grant was suspended.

10 Q. And when was that?

11 A. I believe it was June/July 2003.

12 Q. Did you do any further work for CASI after the grant was
13 suspended?

14 A. Yes, I did.

15 Q. What did you do?

16 A. I worked with the auditor on the first and second audit.
17 The intent was to try to help them find whatever they needed.
18 I also prepared the --

19 THE COURT: Who was the auditor you worked with?

20 THE WITNESS: Belinda Riley.

21 A. I also prepared the financial reports for the fourth
22 quarter 2002, first quarter of 2003 and the second quarter of
23 2003. The intent there was to correct previous reports that
24 were filed inaccurately.

25 Q. So these were revised financial reports?

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Benedict - direct

1 A. Yes, sir, they were.

2 Q. Were these quarterly financial reports?

3 A. Yes, sir, they were.

4 Q. Whose idea was it to create revised financial reports?

5 A. Mine.

6 Q. Why did you want to do that?

7 A. Because the initial reports had indicated that CASI had
8 contributed the match funding requirement that they had in the
9 grant, when in reality they had not, they had not contributed
10 any income to the grant.

11 Q. How did you learn that CASI had not contributed to the cost
12 share?

13 A. By looking at their books. You could tell there was no
14 money coming in from any other source other than ATP, so there
15 was no money to contribute to the project other than the ATP
16 funding. There was nothing evidenced in his books that
17 indicated that any ATP match had occurred.

18 Q. Did you talk to the defendant about creating these revised
19 financial reports?

20 A. Yes, sir, I did. The reports were completed in the middle
21 of July, and it took us about a month to actually file them
22 because we were reworking the cover letter.

23 Q. Before we get to the cover letter, let's look at some of
24 the reports. First, who did you send the revised reports to?

25 A. I sent the reports to ATP.

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Benedict - direct

- 1 Q. If you could look at Government's Exhibits 40A, 41A, 42A
2 and 43A, they should be in front of you in that stack.
- 3 A. Yes, sir.
- 4 Q. Take a look at those.
- 5 A. The numbers again?
- 6 Q. 40A, 41A, 42A and 43A.
- 7 A. Yes, sir.
- 8 Q. Are those the revised financial reports you referred to?
- 9 A. Yes, sir, they are.
- 10 Q. Now if you could look at 40, 41, 42 and 43. Do you see
11 those documents?
- 12 A. Yes, sir.
- 13 Q. Are those the original financial reports that you revised?
- 14 A. Yes, sir.
- 15 Q. Let's take an example. If you could look at 40 versus 40A.
16 We will put those up on the screen.
- 17 A. Yes, sir.
- 18 Q. Which time period do these reports cover?
- 19 A. October 2001 through December 2001.
- 20 Q. Is that the first quarter of the grant?
- 21 A. I believe so, yes, sir.
- 22 Q. And which is the original and which is the revised?
- 23 A. The original is 40, the revised is 40A.
- 24 Q. If you could look specifically at line I.
- 25 A. Yes.

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Benedict - direct

1 Q. Line I in Government Exhibit's 40, first of all, what is
2 line I supposed to be? What is that number supposed to mean?

3 A. It's supposed to mean the amount of money that the grant
4 holder used of his own funding to match the money that the ATP
5 people provided.

6 Q. Is that the cost share?

7 A. Yes, sir.

8 Q. What number is reflected in 40 for the cost share?

9 A. \$12,320.

10 Q. And if you look at 40A, which is the revised report you
11 identified before.

12 A. Yes, sir.

13 Q. What is reflected on line I as the cost share?

14 A. Zero.

15 Q. So, what does that mean?

16 A. That means there was no CASI match.

17 Q. And for the other reports I showed you that I had you look
18 at, does the same thing appear in all of these reports
19 comparing the original to the revised?

20 A. Yes.

21 Q. And do you see also in 40 the line J?

22 A. Yes.

23 Q. The federal share of net outlays?

24 A. Yes.

25 Q. What is that number supposed to represent?

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Benedict - direct

1 A. That amount is supposed to represent the amount of money
2 that you spent on ATP's project.

3 Q. And is that number in fact accurate?

4 A. No.

5 Q. Why not?

6 THE COURT: Which document?

7 MR. EVERDELL: Still looking at 40, line J.

8 Q. Is that number in fact accurate?

9 A. No.

10 Q. Why not?

11 A. Because there was no way to substantiate any number based
12 on the condition of the books.

13 Q. What about in 40A, the same line, line J?

14 A. That number is the amount of money that Dr. Karron drew
15 down from ATP. It's not an accurate number either, but it was
16 more accurate than anything else that I could put in there, and
17 my intent was to make sure, regardless of any other numbers on
18 those reports, that the fact that there was no match
19 contributed was recorded.

20 Q. And your intent meaning your intent in submitting these to
21 NIST?

22 A. Was to make sure that they understood that there was no
23 match and that they would take a harder look at this project.

24 Q. Is that why you submitted these revised reports to NIST?

25 A. Yes.

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Benedict - direct

1 Q. Did you submit a revised financial information with a cover
2 letter?

3 A. Yes.

4 Q. Did you draft the letter?

5 A. I drafted the initial letter. This is not the initial
6 letter. This is a revised letter that, as I said, we worked on
7 for approximately a month.

8 Q. All right. Let's look at the letter you're referring to,
9 Government's 48. If you could put that on the screen.

10 MR. RUBINSTEIN: Is that in evidence?

11 MR. EVERDELL: It's already in evidence.

12 THE COURT: Is it in evidence?

13 MR. EVERDELL: I believe so. It was in evidence
14 through Hope Snowden.

15 THE COURT: I don't see it.

16 DEPUTY COURT CLERK: June 4. 48.

17 THE COURT: Oh, yes.

18 Q. Do you see that letter, Mr. Benedict?

19 A. Yes, sir.

20 Q. If we could blow up the first two paragraphs.

21 If you could please read the first paragraph of the
22 letter?

23 A. "Ms. Snowden, please believe Dr. Karron did not knowingly
24 misstate his SF269A submissions through year one. He signed
25 documents prepared by his project administrator, who, along

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1 with Dr. Karron, did not understand the ATP guidelines or cost
2 principles FAR31.2, and mistook certain financial deposits by
3 Dr. Karron for member contributions."

4 Q. Now, Mr. Benedict, did you write that paragraph?

5 A. No.

6 Q. Who wrote that paragraph?

7 A. Primarily Dr. Karron. He did ask me to include the
8 financial numbers that I was always referencing.

9 THE COURT: Did anyone else participate in the
10 drafting?

11 THE WITNESS: No, sir.

12 Q. But just to be clear, that first paragraph was added at the
13 request of Dr. Karron?

14 A. Yes, sir.

15 Q. All right. If you could please read the first three
16 sentences in the second paragraph.

17 A. "We acknowledge that there are disallowed expenses and they
18 do go back to year one, but they primarily come from two
19 sources. First, Dr. Karron was trying to do the bookkeeping
20 himself and he is not an accountant, mistakes were made.
21 Secondly, there were differing opinions on what is and isn't
22 allowable between the prior administrators of the CA and those
23 now administering the CA."

24 Q. What was the CA?

25 A. That's the grant.

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Benedict - direct

1 Q. That first sentence, "We acknowledge that there are
2 disallowed expenses and they do go back to year one," who wrote
3 that sentence?

4 A. I did.

5 Q. What about the second two sentences, Dr. Karron was trying
6 to do the bookkeeping himself, he is not an accountant,
7 mistakes were made and there were differing opinions about what
8 is and isn't allowable between the prior administrator of the
9 CA and those now administering the CA?

10 A. Those were added by Dr. Karron.

11 THE COURT: What did you say were added?

12 THE WITNESS: The second and the third sentence.

13 THE COURT: "Secondly" or "first"?

14 THE WITNESS: "First" and "secondly".

15 Q. As for the first sentence which you wrote, why did you
16 write that sentence?

17 A. Because I wanted the ATP --

18 MR. RUBINSTEIN: I object to the why questions.

19 Q. What was the purpose for including that sentence?

20 MR. RUBINSTEIN: Objection, your Honor. It speaks for
21 itself.

22 THE COURT: I will allow the answer.

23 This is the sentence "we acknowledge"?

24 A. The letter as I originally wrote it started "Miss Snowden,
25 we acknowledge there are disallowed expenses and they do go

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Benedict - direct

1 back to year one." What I wanted them to understand was that
2 there were disallowed expenses in addition to the fact that
3 there was no match. I was trying to get ATP's attention.

4 MR. RUBINSTEIN: Could we have the date of this
5 exhibit, your Honor?

6 THE COURT: Sorry?

7 MR. RUBINSTEIN: The date.

8 THE COURT: The date on the letter is August 13,
9 according to the copy.

10 MR. RUBINSTEIN: 2003. Thank you.

11 THE COURT: All right.

12 Q. You can put down the letter. Mr. Benedict, are you
13 familiar with someone named Joan Hayes?

14 A. Yes, sir.

15 Q. Who is Joan Hayes?

16 A. Joan Hayes was the auditor employed by CASI.

17 Q. Did you ever have any discussions with the defendant
18 regarding Joan Hayes?

19 A. Yes.

20 Q. What were those discussions?

21 A. Dr. Karron was generally not happy with Joan Hayes. He
22 felt that she just wasn't doing what he wanted her to do.

23 Q. And did he say that to you?

24 A. Yes, sir.

25 Q. What ultimately happened to the grant?

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Benedict - direct

1 A. The grant was suspended.

2 Q. And after the grant was suspended did you have any
3 discussions with the defendant about the state of the project?

4 A. Yes, sir, I did.

5 Q. What was the nature of those discussions?

6 A. As the audit progressed it became apparent that the
7 disallowed numbers and the questioned numbers were going to be
8 very large. I had told Dr. Karron that this was very serious.

9 MR. RUBINSTEIN: I object to what he told Dr. Karron.

10 THE COURT: Are you referring to an audit by Joan
11 Hayes or an audit by Belinda --

12 THE WITNESS: By Belinda Riley.

13 THE COURT: -- by Belinda Riley?

14 Is that what you're inquiring about, Mr. Everdell?

15 MR. EVERDELL: Yes.

16 Q. All right. So, you are familiar with someone named Belinda
17 Riley?

18 A. Yes, sir.

19 Q. Who is Belinda Riley?

20 A. Belinda Riley is the Office of Inspector General's auditor.

21 Q. And did she complete an audit report?

22 A. Yes.

23 Q. Did you discuss that report with Dr. Karron?

24 A. Yes, sir, I did.

25 Q. And what did you tell him, if anything?

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Benedict - direct

1 A. I told Dr. Karron this was very serious, he could go to
2 jail for this, he could have between 300 and 500,000 of
3 disallowed expenditures.

4 Q. What if anything was the defendant's response to that?

5 A. He said don't worry about it, my mom's got it.

6 MR. EVERDELL: No further questions, your Honor.

7 THE COURT: All right, Mr. Rubinstein.

8 CROSS EXAMINATION

9 BY MR. RUBINSTEIN:

10 Q. Good morning, Mr. Benedict.

11 A. Good morning.

12 Q. Now, Exhibit 48 that was just shown to you, the letter that
13 you wrote to Hope Snowden --

14 A. Yes, sir.

15 Q. -- that was written by you, right?

16 A. By myself and Dr. Karron.

17 Q. Was it written in conjunction with Joan Hayes?

18 A. No, sir.

19 Q. How did you send that letter to Hope Snowden?

20 A. Mailed it.

21 Q. Did you fax it to Hope Snowden?

22 A. No, sir, I didn't.

23 Q. Well, did Joan Hayes fax it to Hope Snowden?

24 A. I don't know whether she did or she didn't, sir. She is on
25 copy of the letter.

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Benedict - cross

1 Q. Now, in fact you advised Dr. Karron in August of 2003 that
2 the financial disallowances pursuant to the audit were very
3 serious, correct?

4 A. Yes, sir.

5 Q. And in August of 2003, this is after the grant was
6 suspended, right?

7 A. Yes, sir.

8 Q. And that is the first time that you ever told Dr. Karron
9 that it's possible he could even go to jail for this, right?

10 A. That's possible, yes, sir.

11 Q. His response was he didn't think that was possible, right?

12 A. I told you what his response was. He said don't worry
13 about it.

14 Q. He felt that if you paid back the money there is no
15 problem.

16 A. I don't know what he felt, sir. He didn't say that to me.

17 Q. Well, didn't he tell you that his mom has the money?

18 A. Yes, sir, but Dr. Karron often gave me very flippant
19 answers.

20 Q. But he did say that his mom had the money, correct?

21 A. Yes, sir.

22 Q. Now, you were called a number of times prior to the time
23 that you became the grant manager, the business manager
24 actually of this CASI grant, correct?

25 A. Yes, sir.

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Benedict - cross

- 1 Q. Prior to that time how many calls would you say you got
2 from members of CASI asking your advice and your opinion on
3 allowable expenses?
- 4 A. Four maybe.
- 5 Q. And you spoke to Dr. Karron himself, correct?
- 6 A. Yes, sir.
- 7 Q. And he spoke to you about the rent, right?
- 8 A. Yes, sir.
- 9 Q. He also spoke to you about utilities expenses, correct?
- 10 A. I don't recall, sir.
- 11 Q. Did you ever in those conversations before you came to be
12 employed by CASI ever say to Dr. Karron, you know, if you do
13 this you might wind up in jail?
- 14 A. No.
- 15 Q. Now, it is a fact, sir, that Dr. Karron had project
16 administrators, did he not, prior to you?
- 17 A. Yes, sir.
- 18 Q. He had Lee Gurfein, right?
- 19 A. Yes, sir.
- 20 Q. You spoke to that gentleman?
- 21 A. Yes, sir.
- 22 Q. He called you for advice?
- 23 A. Yes.
- 24 Q. He had Peter Ross?
- 25 A. I never spoke with Peter Ross.

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Benedict - cross

1 Q. Are you aware that Peter Ross is the individual who
2 preceded you?

3 A. I learned that after I joined CASI, yes, sir.

4 Q. So is it fair to say that the statement that you have -- by
5 the way, you authored this letter, correct?

6 A. Yes, sir.

7 Q. You put your signature on it.

8 A. Yes, sir.

9 Q. Are you telling this jury that you lied to Hope Snowden in
10 this letter?

11 MR. EVERDELL: Objection.

12 THE COURT: I will allow the question.

13 A. No, sir.

14 Q. And Dr. Karron indicated to you that he had prior project
15 administrators who didn't understand the ATP guidelines and
16 cost principles, correct?

17 A. Yes, sir. But I know that ATP isn't going to pay any
18 attention to that because ignorance isn't an answer.

19 Q. But you knew that there was a lot of ignorance here in
20 CASI, did you not?

21 A. Yes, sir.

22 Q. And when you first met Dr. Karron, the first thing he did
23 before you ever met him was stand up in an open meeting and
24 said he needs help on the financial side, understanding the
25 financial side, correct?

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Benedict - cross

1 A. Yes, sir.

2 Q. Now --

3 THE COURT: What year was that?

4 THE WITNESS: 2001.

5 MR. RUBINSTEIN: 2001 at a NIST --

6 THE COURT: In the spring?

7 THE WITNESS: Yes, sir.

8 THE COURT: Is that before -- in the spring? All
9 right.

10 THE WITNESS: Yes, sir.

11 Q. And, by the way, these project administrators, at least
12 Gurfein, is somebody that was calling you for guidance,
13 correct?

14 A. Yes.

15 Q. Did you ascertain that in the very beginning of CASI that
16 Dr. Karron was in fact doing the bookkeeping himself?

17 A. After I got there, yes, sir.

18 Q. And in fact he is not an accountant, right?

19 A. That's correct.

20 Q. And that' what you're telling us he asked you to
21 incorporate in this letter, right?

22 A. Yes, sir.

23 Q. That's true, right?

24 A. Yes, it is.

25 Q. And in fact there were differing opinions on what is

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Benedict - cross

1 allowable and what wasn't allowable, correct?

2 MR. EVERDELL: Objection.

3 THE COURT: Objection sustained.

4 Q. Well, you had differences of opinion with Dr. Karron as to
5 what was allowable and what was unallowable, correct?

6 A. Yes, sir.

7 Q. And in fact CASI, prior to the appearance of Belinda Riley,
8 you were attempting to get all the books straightened out, were
9 you not?

10 A. Yes, sir.

11 Q. You were in the process of doing that, correct?

12 A. Yes, sir.

13 Q. And your experience with NIST ATP was based upon your
14 background with IBM and this company Complex, right?

15 A. Yes.

16 Q. How large a company is Complex?

17 A. Say again?

18 Q. How large a company is Complex?

19 A. You mean the consortium?

20 Q. Well, you said you worked for Complex. Is that a
21 consortium? I don't know.

22 A. I didn't say anything about a complex. I worked for IBM
23 managing single grants and consortium grants. The consortium
24 grants are multi-company grants.

25 Q. And did you work on grants for anybody else?

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Benedict - cross

- 1 A. Axiom.
- 2 Q. Axiom. I'm sorry. And how large a company is Axiom?
- 3 A. Axiom is a relatively small software development company
- 4 that worked with IBM.
- 5 Q. When you say relatively small, how many employees did Axiom
- 6 have?
- 7 A. 250.
- 8 Q. 250 employees?
- 9 A. Um-hum.
- 10 Q. And Axiom, what kind of grant did they get?
- 11 A. They didn't have a grant. I was a consultant working for
- 12 them, and they hired me out to IBM. So all of my grant
- 13 experience is related to IBM experience -- or ATP experience
- 14 was all related to IBM projects.
- 15 Q. Without being facetious, IBM is a giant company, right?
- 16 A. Yes, sir.
- 17 Q. Now, were you the sole -- were you the business manager for
- 18 IBM dealing with the grants?
- 19 A. Yes, sir.
- 20 Q. And what kind of grants did IBM get?
- 21 A. Software development, high-risk software development
- 22 grants.
- 23 Q. And what dollar amount?
- 24 A. The first one was the same size as Dr. Karron's. The last
- 25 two were 24 and \$26 million grants.

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Benedict - cross

1 Q. Now, the first one is what is called a single grant?

2 A. Yes.

3 Q. And the others were consortium, which meant those grants
4 involved more than one company?

5 A. Yes, sir.

6 Q. Now, in your single grant, did you write the budget for
7 that grant?

8 A. No, sir, I did not.

9 Q. Did you ever have -- was the budget in place when you
10 became the grant manager?

11 A. Yes, sir, it was.

12 Q. And that's the only budget, single grant budget, dealing
13 with NIST ATP. Was that -- I'm sorry. Was that the only
14 single grant budget from ATP NIST?

15 A. Yes, sir.

16 Q. That you ever worked on?

17 A. Yes, sir.

18 Q. In that budget were you paid? Was IBM paid up front? Did
19 they have the grant money up front, or did they have to be
20 reimbursed?

21 A. Reimbursement.

22 Q. So that IBM would have to spend their money first, right?

23 A. Yes.

24 MR. EVERDELL: Objection.

25 THE COURT: Objection sustained. When you start with

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Benedict - cross

1 "so" --

2 MR. RUBINSTEIN: All right.

3 Q. IBM spent their money first, correct?

4 A. Yes, sir.

5 Q. Then would it be your job to request reimbursement from the
6 grant?

7 A. Yes, sir.

8 Q. And how would you do that?

9 MR. EVERDELL: Objection. Relevance.

10 THE COURT: I'm going to allow the question.

11 A. I would submit a report to ATP asking them for
12 reimbursement based on the detailed expenditures I reviewed.

13 Q. And were you ever turned down?

14 A. No, sir.

15 Q. Now, when you were doing the consortium projects, was that
16 a reimbursement also situation?

17 MR. EVERDELL: Objection.

18 THE COURT: Objection overruled.

19 A. Yes.

20 Q. And did you submit the reports requesting reimbursement?

21 A. Yes.

22 Q. And, by the way, how much of the 2 million that IBM
23 received in the first grant, the single grant, was actually --
24 I will withdraw that.

25 How many years was that grant for, the first grant?

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Benedict - cross

- 1 A. Two.
- 2 Q. Two years?
- 3 A. Yes, sir.
- 4 Q. For \$2 million?
- 5 A. Yes, sir.
- 6 Q. And how much of the 2 million did IBM spend?
- 7 A. All of it.
- 8 Q. And the two consortium grants, those were for 24 million a
- 9 piece?
- 10 A. 24 and 26.
- 11 Q. And how much of the \$24 million grant did IBM spend, the
- 12 consortium?
- 13 A. The consortium spent all of the money.
- 14 Q. And how about the \$26 million grant, how much did the
- 15 consortium spend on the 26 million grant?
- 16 A. They spent all the money.
- 17 Q. When you would submit a document to ATP, were any of the
- 18 reimbursed expenditures ever rejected?
- 19 MR. EVERDELL: Objection.
- 20 THE COURT: Objection overruled. Can I hear the
- 21 question again?
- 22 A. I don't recall any being rejected.
- 23 Q. What years were this that you were dealing with NIST ATP on
- 24 these grants?
- 25 A. 1994 to 2002.

8697KAR2

Benedict - cross

1 Q. Now, did you ever have occasion to speak to any of the
2 grant administrators from ATP?

3 A. Yes, sir.

4 Q. And who did you speak to? I am talking on behalf of the
5 IBM grants. Did you ever have occasion to speak to any of the
6 administrators?

7 MR. EVERDELL: Objection.

8 THE COURT: Objection sustained.

9 Q. Did you ever have occasion to submit any budget revisions
10 on behalf of any of the IBM grants?

11 MR. EVERDELL: Objection.

12 THE COURT: I will allow the question.

13 A. Yes.

14 Q. What kind of budget revisions did you request?

15 A. As the projects proceeded, you learn your initial budget
16 doesn't have all the money in all the right places, and so you
17 request movement of the money from one budget line to another
18 budget line. I don't specifically recall any of the details,
19 but, yes, they occurred.

20 Q. That's a common thing in these kind of high-tech, high-risk
21 types of grants, right?

22 A. Yes.

23 Q. Now, you were involved, were you not, in CASI's original
24 budget submission?

25 A. No.

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Benedict - cross

1 Q. Well, did you discuss with Dr. Karron the original budget
2 that he was submitting?

3 A. No.

4 Q. In fact you were never approved by ATP NIST for the CASI
5 project.

6 A. I found that out later, yes, sir.

7 Q. When did you find that out?

8 A. During the audit by OIG, by Belinda Riley.

9 Q. You were never formally rejected, correct?

10 A. Correct.

11 Q. And isn't it a fact that ATP wouldn't speak to you before
12 Belinda Riley showed up because you were not approved by them?

13 A. They did not return phone calls.

14 Q. But you did call them before the grant was suspended on
15 June 27, correct.

16 A. Yes, sir.

17 Q. And after the grant was suspended you learned from Riley
18 that you were not approved, correct?

19 A. Yes.

20 Q. And when would you say that was in time frame?

21 A. July/August sometime.

22 Q. Had you received any remuneration, any payment from CASI
23 for the work you had done as manager?

24 A. Yes.

25 Q. And in fact Dr. Karron brought you aboard and told you when

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8697KAR2

Benedict - cross

1 you came aboard he needed somebody who really knew what they
2 were doing?

3 A. Yes.

4 Q. And did you help early on? Before were you actually hired,
5 when you were getting these calls from CASI, did you recommend
6 that any category be added to the budget called "others"?

7 A. I don't recall anything like that, no, sir.

8 THE COURT: For what? For other?

9 MR. RUBINSTEIN: "Others".

10 Q. That is a category in the budget, is that correct?

11 A. No, sir, not as far as I know it isn't.

12 Q. Now, you say you were getting \$60 an hour, correct?

13 A. Yes, sir.

14 Q. Were you aware what Lee Gurfein was being paid?

15 A. No, sir.

16 Q. Did you become aware of what Lee Gurfein had been paid?

17 A. No, sir.

18 Q. Did you ever say to Dr. Karron that what CASI paid Lee
19 Gurfein was insane?

20 A. I don't recall, no, sir.

21 Q. Well, did you have occasion as the manager -- you submitted
22 revisions, did you not?

23 A. Yes, sir.

24 Q. Revisions for the whole budget, correct?

25 A. We submitted a budget amendment, yes.

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8697KAR2

Benedict - cross

1 Q. Did you review the prior budgets?

2 A. The only prior budget that I saw was the one that was
3 originally filed with the grant.

4 Q. And that had a salary for Lee Gurfein, did it not?

5 A. Yes.

6 Q. Are you telling this jury that you didn't notice what
7 Mr. Gurfein was being paid?

8 THE COURT: Objection to the form of the question.

9 MR. EVERDELL: Objection.

10 THE COURT: He didn't say he didn't notice.

11 Q. Well, did you see in that budget --

12 THE COURT: He said he never made the statement to Dr.
13 Karron is what he said.

14 Q. Well, did you see in that budget what Lee Gurfein was being
15 paid?

16 A. Yes, I saw what he was being paid.

17 Q. And how much was Gurfein being paid?

18 A. I don't recall.

19 Q. After you saw that, did you ever have any conversation with
20 Dr. Karron as to the amount that they were paying Lee Gurfein?

21 A. No, sir, not to my memory I don't.

22 Q. Did you discuss with Dr. Karron the 10 percent rule?

23 A. Yes.

24 Q. And did you advise him that it's really a 20 percent rule,
25 that you can add 10 percent if you take 10 percent off?

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Benedict - cross

1 A. I don't understand the question.

2 Q. Well, the 10 percent rule permits you, does it not, sir, to
3 increase any line in the budget by 10 percent?

4 A. Yes, it's a plus or minus 10 percent rule.

5 Q. So you would have to reduce by 10 percent in order to
6 increase by 10 percent?

7 A. Yes, sir. You weren't going to get any more money.

8 Q. The dollar amount, in this case \$800,000 for the first
9 year, was your sealing, top amount.

10 A. Yes.

11 Q. So, in effect it really was 10 percent up and 10 percent
12 down; you wound up with the same dollar amount budget.

13 A. Yes. You can go plus or minus 10 percent on any budget
14 line without getting a budget amendment.

15 Q. And are you familiar with whether or not there are special
16 conditions that are sometimes imposed by ATP as part of the
17 grant?

18 A. There are sections in grants that are called special terms
19 and conditions. I don't recall what they were, if there were
20 any with Dr. Karron's grant.

21 Q. Well, you told us that you recommended that Dr. Karron get
22 grant manager training?

23 A. Yes.

24 Q. You sent him a catalog, right?

25 A. Yes.

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Benedict - cross

1 Q. Did you also suggest that the people who work for him in
2 the administration do the same?

3 A. Yes.

4 Q. And you learned in fact that neither Dr. Karron nor anyone
5 in the administration took the course, correct?

6 A. That's correct.

7 Q. And did Dr. Karron advise you that he would rely upon his
8 network of assistants to get him through the grant process?
9 Right?

10 A. I don't recall that comment, no, sir.

11 Q. Well, when did you speak to somebody involved in the
12 prosecution in this case?

13 A. Could you repeat the question, please.

14 Q. Yes. When were you first approached by anybody at that
15 first table about this case?

16 A. Two years ago?

17 Q. And who were you approached by?

18 A. Agent Ondrik.

19 Q. Do you see that agent here?

20 A. Yes. She is sitting over there at the table. Kirk was
21 also there. He's sitting at the end of the table.

22 Q. And how about the prosecutors here, when did you meet the
23 prosecutors for the first time?

24 A. Two months ago.

25 Q. 2008, correct?

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Benedict - cross

1 A. Yes, sir.

2 Q. Do you recall telling the agents that instead he, meaning
3 Dr. Karron, depended on his network of associates to get him
4 through the process?

5 A. Dr. Karron would --

6 Q. Do you recall saying that to the agents here under oath?

7 A. Not specifically, no, sir.

8 Q. OK. Let me show you this document which has been
9 previously marked as 3506-A and ask you first to look at the
10 top on the back, and then I will direct you to a specific place
11 in the document. Did you review that, sir?

12 A. Number 3?

13 Q. Well, first of all, did you review the fact that that's an
14 affidavit that you signed and swore to?

15 A. Yes it is. Yes, sir.

16 Q. And you read it before you swore to it?

17 A. Yes, sir, I did.

18 Q. And you initialed every page?

19 A. Yes, sir.

20 Q. I direct your attention to what I have as number three and
21 ask you if that refreshes your recollection that Dr. Karron
22 told you he depended on a network of associates to get him
23 through the process.

24 A. That's not what he told me, sir. It's what he did.

25 (Continued on next page)

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869zkar3

Benedict - cross

1 BY MR. RUBINSTEIN:

2 Q. You observed that, that he relied upon other people to get
3 him through the process?

4 A. Dr. Karron would ask a question. If he got an answer he
5 didn't like, he'd ask somebody else until he got something that
6 was close to what he wanted, and he would go in that direction.

7 Q. And had you, in your prior experience with ATP NIST, ever
8 have occasion on, aside from CASI, of negotiating as to what
9 was allowable or allowed; did you have that occasion,
10 experience?

11 A. Yes, sir.

12 Q. Now, somebody did take that course that you recommended,
13 right?

14 A. Yes.

15 Q. And that was Joan Hayes, right?

16 A. Yes.

17 Q. And who paid for that course?

18 A. I have no idea, sir.

19 Q. Are you aware that whether or not CASI paid for that course
20 for Joan Hayes?

21 A. I have no recollection of that, sir. Joan Hayes was a CASI
22 employee, not an ATP employee. What CASI did with CASI's
23 money, I didn't care.

24 Q. She was their accountant, she was CASI's accountant?

25 A. She was CASI's accountant CPA, auditor.

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Benedict - cross

1 Q. She was wearing multiple hats for CASI, correct?

2 MR. EVERDELL: Objection.

3 THE COURT: Objection sustained.

4 Q. Well --

5 THE COURT: Let's --

6 Q. If Dr. Karron -- when you recommended to Dr. Karron that he
7 or somebody in CASI take this course on auditing -- it was kind
8 of an auditing course for the budget?

9 A. The courses that are offered by management concepts cover a
10 number of subjects. One is the A-133 audit, which is the
11 federal government auditing process. There were courses on
12 grant management, there were courses on grant writing. I mean,
13 they have a number of courses.

14 Q. So the person that went down for the course on grant
15 management was the accountant, correct?

16 A. Yes, sir.

17 Q. And that was prior to the time that you came aboard,
18 correct?

19 A. I don't know when she went.

20 Q. And is it your view that that would not, would not be an
21 allowable expense?

22 A. It's not an allowable expense to the grant, no, sir.

23 Q. Did you ever discuss that with anybody at ATP?

24 A. No, sir.

25 Q. Did Mark Stanley speak at the conference where you met Dr.

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Benedict - cross

1 Karron?

2 A. I don't recall if he spoke at that conference or not; no,
3 sir.

4 Q. Have you been present when Mark Stanley spoke to grant, to
5 hopeful grant recipients?

6 A. Yes.

7 Q. And it's fair to say that Mark Stanley said that they would
8 attempting to, to help anybody who got a grant?

9 MR. EVERDELL: Objection.

10 A. I don't specifically recall him making that comment.

11 Q. Well, did you advise Dr. Karron that NIST ATP was one of
12 the most friendly organizations to the recipients?

13 A. That was my experience.

14 Q. And --

15 THE COURT: Did you tell him?

16 THE WITNESS: I don't recall making that, that
17 statement.

18 Q. Did you advise Dr. Karron that there is always a way to get
19 amendments; did you advise Dr. Karron of that?

20 A. I don't understand the question.

21 Q. There's always a way for an expense to be considered, to be
22 allowable?

23 A. I don't recall that statement. That would seem to be too
24 broad.

25 Q. Are you familiar with types of equipment that Dr. Karron

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869zkar3

Benedict - cross

1 had in the NIST ATP project?

2 A. I was familiar to the extent that they were large and very
3 powerful pieces of equipment. Other than that, I don't know.
4 I'm not a technologist.

5 Q. And are you aware that you could revise the budget after
6 the year was up?

7 A. After what year was up?

8 Q. Well, in this case CASI had a budget for -- starting
9 October 1st, 2001 running till September 30th, 2002, correct;
10 first year of the grant?

11 A. Yes.

12 Q. And that had you had to reapply for the second -- did you
13 have to reply for the second year?

14 A. No, sir.

15 Q. It was automatic?

16 A. It was a two year grant.

17 Q. Isn't it a fact this was a three year grant?

18 A. Three year grant. I don't recall whether it's two or
19 three.

20 Q. IBM was a two year grant?

21 A. Yes.

22 Q. Now, is there any review after the first year by, that
23 you're aware of, by ATP NIST of the grant people, the CASI?

24 MR. EVERDELL: Objection.

25 THE COURT: I'll allow the question. I'd like a time

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Benedict - cross

1 frame, though, Mr. Rubinstein.

2 MR. RUBINSTEIN: Okay. I'll withdraw the question,
3 Judge, even though you allowed it.

4 Q. Are you aware that after the first year of the grant, you
5 are required to submit an audit?

6 A. I don't remember if that was a specific requirement of this
7 grant or not.

8 Q. Well, are you aware as to whether or not you can, after the
9 year is over, in other words subsequent to September 30th,
10 2002, whether or not you could request a budget revision for
11 the year 2000 -- October 1, 2001, to September 30th, 2002?

12 A. My experience with ATP grants is that you have a three year
13 budget. You may or may not spend everything in year one. You
14 can do budget amendments as you need them.

15 Q. Could you -- you told us before about as you go on in your
16 grants you learn that you may have needs for more money in one
17 line item than another item, correct?

18 A. Yes, sir.

19 Q. You might even need an additional line item that you didn't
20 have before, correct?

21 A. Yes, sir.

22 Q. The question is, after you finish your first year, do you
23 know whether or not if you check over your actuals, what you
24 really spent and what you really spent it on, whether you can
25 have your first year budget revised to reflect that?

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Benedict - cross

1 A. I don't believe so.

2 Q. Well, let me show you what's -- well, you're not sure?

3 A. No, I'm not.

4 Q. Let me show you what's in evidence as government Exhibit 4,
5 page 11.

6 MR. RUBINSTEIN: Could you put that up on the board,
7 please?

8 Q. Were you ever present at a kickoff meeting with people from
9 NIST ATP where they -- were you ever present at such a --

10 A. Yes, sir, I've been present at kickoff meetings, ATP
11 kickoff meetings.

12 Q. Okay. And did they give you a lot of material when you go
13 there?

14 A. Yes.

15 Q. And how voluminous is the material that they give you.

16 A. I don't recall.

17 Q. Could you show us with your hands as to how -- do they give
18 you the CFR?

19 THE COURT: Witness has indicated about an inch thick.

20 A. No. They gave us the CFR numbers, told us where to go and
21 look.

22 Q. You have to go look yourself in the CFR?

23 A. Yes.

24 Q. And you see what's on that recipient responsibility?

25 A. Yes.

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Benedict - cross

1 Q. And you see the second portion?

2 MR. EVERDELL: Your Honor, objection. He wasn't at
3 the kickoff meeting for this grant.

4 BY MR. RUBINSTEIN:

5 Q. Well, does that refresh your recollection by looking at
6 that, that in fact you could revise a budget after the end of
7 each year?

8 A. I don't recall that slide, but -- what I believe they're
9 saying there, though, is as you go forward, you revise the
10 three year budget, so that it now lines up with what you have
11 to do going forward, not that you go back and revise what's
12 already happened, budget wise.

13 Q. What did you do at IBM if you had an item that you spent
14 less money on during the year? You said you spent the million
15 dollars the first year, right, out of the million?

16 A. I don't recall what we spent the first year.

17 Q. Well, did you testify before, you spent the whole million?

18 A. I testified that we spent all the money in the grant.

19 Q. Okay.

20 A. I didn't testify that we spent it by year.

21 Q. Did the line items -- did you have any changes in the line
22 items?

23 A. Yes, sir.

24 Q. And when would you submit those changes in line items?

25 A. We would submit them as we understood what we had to do to

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Benedict - cross

1 go forward, and then we would make the changes to the budget.

2 So what we would take the -- what we didn't spend in the prior
3 year on a specific line, and roll it to another line in the --
4 going forward.

5 Q. And Dr. Karron advised you, when you were hired, that he
6 had problems with his prior grant administrators, correct?

7 A. Yes, sir.

8 Q. And the submission -- excuse me. And Dr. Karron wanted you
9 to submit as part of your revision 100 page, 100 additional
10 pages, correct?

11 A. I don't know how many pages were, but it was a significant
12 volume of documents, stating technical references and such.
13 They really didn't have anything to do with the budget itself.

14 Q. Why don't you take a look at page two of the document that
15 I gave you and see if that refreshes your recollection as to
16 the size?

17 THE COURT: Page two of what document?

18 MR. RUBINSTEIN: 3506A.

19 A. Yes, sir.

20 THE COURT: Are you going to show that to him?

21 THE WITNESS: I have it.

22 THE COURT: You have it?

23 THE WITNESS: It's here.

24 THE COURT: Oh.

25 Q. You see the first full paragraph?

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Benedict - cross

1 A. Yes.

2 Q. And, in fact, he wanted you to include in excess of a
3 hundred pages --

4 A. Yes.

5 Q. -- to justify the budget?

6 MR. EVERDELL: Objection. He's reading from the
7 document that's not in evidence.

8 THE COURT: I'm sorry?

9 MR. EVERDELL: He's reading from a document not in
10 evidence.

11 THE COURT: Yes, objection sustained.

12 Q. Well, is it a fact that you testified on direct as to
13 discussions with Dr. Karron about the submission of this
14 revised budget once you came aboard, correct?

15 A. Yes.

16 Q. And Dr. Karron suggests that you include in excess of 100
17 pages of backup to the budget revision request?

18 A. He provided the pages. He did all that work.

19 Q. And were you able to convince him to reduce the number of
20 pages that you submitted?

21 A. Not by much.

22 Q. He did reduce the pages, correct?

23 A. Yes, sir.

24 Q. And your feeling was that ATP wouldn't even look at all
25 those pages, so there was no sense in submitting them, correct?

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Benedict - cross

1 A. Sir, this was a budget amendment. It wasn't a technical
2 amendment. It was -- he wasn't changing the technical
3 direction of his project, and submitting all that technical
4 data to the budget people would make them wonder what we're
5 doing.

6 Q. You thought that it might raise a red flag that people
7 didn't know what they were doing at CASI?

8 A. Yes.

9 Q. By submitting this kind of provision --

10 MR. EVERDELL: Objection.

11 Q. -- right?

12 MR. EVERDELL: Objection.

13 THE COURT: Well, I'll allow the question if you want
14 to ask it, Mr. Rubinstein.

15 Q. In fact, you were concerned that the revision would be
16 rejected just on the form of the submission?

17 A. I was concerned that it would be slowed down in the
18 process. I was not concerned that they would reject it out of
19 hand.

20 Q. Isn't it a fact that you indicated to Dr. Karron that the
21 prior revision request appeared -- would appear -- appeared to
22 ATP that CASI didn't know what they were doing?

23 A. I don't recall that.

24 Q. Why don't you look at page two of your affidavit, 3506A,
25 and take a look at the second full paragraph.

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Benedict - cross

1 A. Yes.

2 Q. And does that refresh your recollection as to telling Dr.
3 Karron that the prior multiple budget revisions appeared to ATP
4 like CASI didn't know what they were doing?

5 (Pause)

6 A. I was concerned that the ATP financial team would not be
7 able to get through all of the technical babble.

8 Q. Now, when you weren't getting responses from ATP from your
9 inquiries, did you ask whether or not you had been approved?

10 A. I called ATP to ask about the status of the budget
11 amendment and did not receive any response.

12 Q. And you knew that in their budget amendment was a request
13 to have you replace the position that had originally been
14 occupied by Lee Gurfein, correct?

15 A. Yes, sir.

16 Q. And it's fair to say that you felt your credentials
17 supported your being approved for the position, right?

18 MR. EVERDELL: Objection.

19 THE COURT: Objection overruled.

20 A. I -- yes.

21 Q. Did this raise a red flag in your mind as to that there
22 were problems here at CASI?

23 THE COURT: That what?

24 MR. EVERDELL: Objection.

25 Q. The fact that nobody would speak to you as the business

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Benedict - cross

1 manager for CASI from ATP?

2 A. It was not consistent with my experience, so I was
3 concerned that there was something going on, but I didn't know
4 what it was or -- whether it was related to CASI or something
5 going on at NIST.

6 Q. Did you speak to Dr. Karron about it?

7 A. Dr. Karron was aware that we had heard nothing.

8 Q. Did you ask him if he could call the people at ATP?

9 A. He -- I knew he was calling and talking to them.

10 Q. So because he reported that to you, he reported he was
11 speaking to the people at NIST?

12 A. Yes.

13 Q. Did you ask him, did you ask about my approval?

14 A. I don't recall that, no.

15 Q. Are you aware, sir, that if the budget -- you know that you
16 never got a budget revision approval, correct?

17 A. Yes, sir.

18 Q. And your approval was attached to the budget approval,
19 right?

20 A. Yes.

21 Q. So that if the budget wasn't approved, you had to know, did
22 you not, then you weren't approved?

23 A. I didn't know whether the budget was approved or not. I
24 knew there was no response. I didn't have a yes, I didn't have
25 a no.

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Benedict - cross

1 THE COURT: Is this a good place to break, Mr.
2 Rubinstein?

3 MR. RUBINSTEIN: Yes, your Honor.

4 THE COURT: Let's break for the morning break. Be
5 back between five and ten minutes.

6 (Jury exits the courtroom)

7 (In open court; jury not present)

8 THE COURT: Step down. You want an instruction, Mr.
9 Rubinstein?

10 MR. RUBINSTEIN: No. I want him to be careful when he
11 walks by. It seems like it's higher today than before, I.

12 MR. EVERDELL: You can wait in our witness room and
13 we'll call you.

14 THE COURT: You can use the men's room, and watch your
15 step.

16 MR. RUBINSTEIN: Judge in an abundance of caution, did
17 we resolve the issue on the alterations in the apartment?
18 Because I have a -- I don't think we actually resolved that
19 issue. I have a witness related to it. I just want to make
20 sure that, you know.

21 THE COURT: Well, I asked you all to resolve the
22 issue.

23 MR. RUBINSTEIN: Yes.

24 THE COURT: And, apparently, you couldn't reach a
25 resolution.

869zkar3

Benedict - cross

1 MR. RUBINSTEIN: Right, all right.

2 THE COURT: I suggested one, but I wasn't sure it met
3 with your approval.

4 MR. RUBINSTEIN: That was sort of my recollection,
5 but -- thank you.

6 THE COURT: I thought you could -- I thought your --
7 as I understand, your problem is that they use the term
8 alterations that what they use in their --

9 MR. RUBINSTEIN: Improvements.

10 THE COURT: You say site improvement is allowed.

11 MR. RUBINSTEIN: Yes, they use the word --

12 THE COURT: And you claim site improvement, they claim
13 it's, you know, an alteration to the --

14 MR. RUBINSTEIN: Well --

15 THE COURT: I don't know whether it's site improvement
16 or not. As I understand it, it's basically shelves.

17 MR. RUBINSTEIN: All right.

18 THE COURT: But they're not claiming -- they would
19 stipulate, as I understand it, that they're not making any
20 claim that it's improved the, whatever they were improved, the
21 value of the apartment --

22 MR. RUBINSTEIN: Right.

23 THE COURT: -- for his personal benefit.

24 MR. RUBINSTEIN: Right. Well, it's a very --

25 THE COURT: It's just that they were not allowed under

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Benedict - cross

1 the terms of the grant.

2 MR. RUBINSTEIN: Exactly, exactly.

3 THE COURT: I'd be glad to instruct them along those
4 lines. Your Honor, I think that's right as your Honor just
5 phrased it. We're not claiming that -- we're not taking a
6 position on how those improvements or renovations or
7 alterations current cost increased or decreased the value of
8 this, his property. All we're saying is that he used those, he
9 used grant funds to make those alterations.

10 Now, there may have been some business purpose that he
11 made these alterations; otherwise, he wouldn't have made it as
12 an economic rational being. But we're not saying that it
13 increased the market value of his property, just like if you
14 paint your house black for some reason.

15 THE COURT: You're not saying also, as I understand
16 it, that there was -- that the only -- the only thing they're
17 saying is, as I understand it, is that the alterations, the
18 cost of the alteration was not a reimbursable expense under the
19 grant.

20 MR. RUBINSTEIN: But they want to leave --

21 THE COURT: Now, you're saying there was site
22 improvement. I don't know what site improvement means, and I
23 don't know whether what alterations mean. Obviously,
24 alteration could be site improvement, and --

25 MR. RUBINSTEIN: Then I think I have to call the

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Benedict - cross

1 witness. I think you're right, Judge; therefore, we're going
2 to call the witness.

3 THE COURT: I mean, it may be just a matter of
4 semantics and maybe it's not worth the government pressing the
5 issue. Maybe you can get --

6 MR. RUBINSTEIN: The witness won't be that long,
7 Judge.

8 THE COURT: All right.

9 MR. KWOK: Your Honor, before we rest and I guess
10 after we're done with this --

11 THE COURT: Putting all those computers into the
12 apartment would also probably diminish the market value of the
13 apartment. It just wouldn't make it easy to sell.

14 MR. RUBINSTEIN: We didn't have that problem because
15 the government came and removed everything, Judge.

16 THE COURT: In cross-examination, I can hear that
17 being beaten and brought up. Anyway.

18 MR. KWOK: Can we just move onto a different slightly
19 different issue your, Honor?

20 THE COURT: Yes.

21 MR. KWOK: After we're done with this witness and
22 before the government rests, we intend to read a stipulation
23 that introduces into the record a disk provided by the
24 defendant which contains e-mails between Dr. Karron and others
25 in the company, and we intend to --

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Benedict - cross

1 THE COURT: I haven't seen that stipulation in the
2 issues submitted.

3 MR. KWOK: I think it's --

4 THE COURT: Is it an exhibit?

5 MR. KWOK: It's government exhibit 90 --

6 THE COURT: Government exhibit 90?

7 MR. KWOK: 902.

8 THE COURT: Oh 902. Well, 902 mentions Exhibit 1000.
9 I don't know anything about exhibit 1000.

10 MR. KWOK: That is actually the disk that I'm
11 referring to.

12 THE COURT: I don't know what was in 1000. You may
13 have a lot of problems with 1000.

14 MR. KWOK: It's --

15 THE COURT: How am I going to rule on that? I mean
16 it's stipulated -- you stipulated it in, so I don't have to.

17 MR. KWOK: We stipulated to it.

18 All I'm saying is we want to read that stipulation
19 into the record, and then publish a few of the e-mails
20 extracted from this disk to publish that to the jury. It's not
21 going to take very long. I hope it's going to be six, roughly
22 short.

23 THE COURT: If you're publishing e-mails, be sure you
24 give what comes before or what comes -- I mean you've got to --

25 MR. RUBINSTEIN: Well, they have to show me what

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Benedict - cross

1 the -- I stipulated this was --

2 THE COURT: You better show him what portions you're
3 going to if you're not going to publish the whole thing.

4 MR. KWOK: We will do that, we will.

5 THE COURT: You better agree on the portion you're
6 going to do.

7 All right, let's take our five minutes and get back.
8 The jury's had five minutes.

9 (Recess taken)

10 THE COURT: All right, let's bring in the witness -- I
11 mean the jury and the witness.

12 (Jury entering)

13 THE COURT: All right, please be seated.

14 Mr. Rubinstein.

15 BY MR. RUBINSTEIN:

16 Q. Did you send an e-mail to Dr. Karron on April 19th, 2004
17 related to your experience at CASI?

18 A. I don't recall.

19 Q. Let me show you this document that's been marked as
20 defendant's U for identification?

21 THE DEPUTY CLERK: U as in under?

22 MR. RUBINSTEIN: Right, Robert.

23 THE COURT: What was the date?

24 MR. RUBINSTEIN: April 19th, 2004.

25 THE COURT: Thank you.

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Benedict - cross

1 (Pause while witness reviews document)

2 A. I've read it, yes.

3 Q. Did you send that to Dr. Karron?

4 A. It appears I did.

5 Q. And was it your evaluation of ATP that Hope Snowden was
6 only interested in whether --

7 MR. EVERDELL: Objection.

8 Q. -- CASI dotted all the I's and crossed all the T's?

9 MR. EVERDELL: He's reading from the document.

10 THE COURT: Objection sustained. It's not in evidence
11 yet.

12 MR. RUBINSTEIN: Okay. I would offer this into
13 evidence, defendant's U.

14 MR. EVERDELL: No objection, your Honor.

15 THE COURT: No objection? Exhibit U is admitted in
16 evidence.

17 (Defendant's Exhibit U received in evidence)

18 Q. Would you read -- this is prior to the time that you were
19 approached by the federal agents, correct?

20 A. Yes.

21 Q. Would you read what's in evidence as defendant's U?

22 A. All of it?

23 Q. Yes, please.

24 A. As you know, one of my first acts was to assist in the
25 submission of the CASI response to the multi page questionnaire

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Benedict - cross

1 tossed at CASI. This response included a budget and amendment,
2 along with a request to have immediate --

3 THE COURT: You have to slow down a little bit.

4 A. This response included a budget amendment, along with a
5 request to have me acknowledged as your administrator. Hope
6 ignored both requests. We never received any acknowledgment,
7 verbal or in writing, that our response amendment request would
8 or would not be approved.

9 As such, I was never approved as the administrator,
10 and Hope would not answer or return my phone calls. I was a
11 non-participant and, therefore, someone to be ignored.

12 The fact that I had eight years experience with ATP
13 projects as an administrator, without any audit problems, and a
14 litany of ATP references which Hope never bothered to check,
15 didn't appear to be viewed as a positive addition to the
16 project. The rare communications we did receive were addressed
17 to Dr. Karron or Peter Ross, ignoring the fact that ATP was
18 informed Peter was no longer involved. It was very frustrating
19 and, apparently, in direct opposition to what would have been
20 in the best interests of both CASI and NIST. Ms. Snowden
21 appeared to be a bureaucrat totally disinterested in the
22 success of the project and only interested in whether CASI
23 dotted all the I's and crossed all the T's, associated with a
24 rigid understanding of the ATP and other relevant federal
25 guidelines. She consistently ignored CASI attempts to provide

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Benedict - cross

1 service which would help the project and her, in the meantime.
2 She believed CASI was out of control from the beginning, and
3 the number of personnel changes and amendment requests proved
4 her right in her mind. There was no way given to the
5 possibility that changes were driven by Dr. K's lack of ATP
6 experience or assistance offered to help Dr. Karron grapple
7 with the ATP quagmire.

8 ATP is as responsible for the state of the CASI
9 project as anyone. Sorry, but that's the best recollection I
10 can muster.

11 Q. Now, are you familiar with --

12 THE COURT: Now, this, apparently, has a -- this
13 exhibit contains more than just the e-mail of doctor -- of the
14 witness, Mr. Benedict. So is it going to be cropped in some
15 way?

16 MR. RUBINSTEIN: Yes, your Honor. Yes.

17 THE COURT: So that it's one page?

18 THE WITNESS: Yes. This letter was in response to a
19 e-mail from Dr. Karron.

20 THE COURT: No, never mind.

21 MR. EVERDELL: Your Honor, I think we need the full
22 e-mail for the understanding.

23 THE COURT: What?

24 MR. EVERDELL: I think we need the full understand --

25 THE COURT: You want it in?

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Benedict - cross

1 MR. EVERDELL: I'm sorry?

2 THE COURT: You want both e-mails in?

3 MR. RUBINSTEIN: No problem.

4 THE COURT: Both parties agree?

5 MR. RUBINSTEIN: If they want it in.

6 THE COURT: No objection?

7 MR. RUBINSTEIN: I have no objection.

8 THE COURT: All right. Then the entire exhibit will

9 be admitted in evidence. I just have to make sure that -- so

10 it contains two messages, all right.

11 Q. Mr. Benedict, do you know what sunk costs are?

12 A. Sunk?

13 Q. Yes, s-u-n-k costs?

14 A. Those are costs that have been incurred already.

15 Q. And are they -- do they have to be expended or could they

16 be accrued?

17 A. Sunk costs are -- depending on your accounting method, if

18 you're on accrual accounting method, accrued cost could be

19 considered sunk cost. If you're on a cash method, it's only

20 cash costs.

21 Q. Well, are you familiar with pre-grant purchases?

22 A. They're not allowed.

23 Q. I asked are you familiar with it?

24 A. Yes.

25 Q. And it's your opinion that they're not allowed?

869zkar3

Benedict - cross

- 1 A. It's not my opinion. It's ATP guidance.
- 2 Q. ATP could waive any rule that they have, correct?
- 3 A. I don't know what ATP can or will do.
- 4 Q. Well, if costs are expended in preparation for the grant to
- 5 be used for the grant, it's up to ATP to decide whether or not
- 6 they're going to prove those costs or not?
- 7 A. That would seem to be okay.
- 8 Q. And just as in rent, which is considered, generally
- 9 speaking, almost always as an indirect cost, correct?
- 10 A. Yes.
- 11 Q. Now, do you understand -- you have an accounting
- 12 background, correct?
- 13 A. Yes, sir.
- 14 Q. Education wise and experience wise?
- 15 A. Yes, sir.
- 16 Q. And are you familiar with the background as to why rent is
- 17 considered by in the ATP grant as indirect cost?
- 18 A. Yes.
- 19 Q. And why is that?
- 20 A. Businesses are presumed to be in existence when they apply
- 21 for an ATP grant as a business.
- 22 As a business already in place, you're already paying
- 23 your rent, you're already paying your heat, you're already
- 24 paying those things.
- 25 ATP is interested in funding projects, not rent, not

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Benedict - cross

1 electricity, not other things. So they will not allow you to
2 include what you're already spending as a normal business as
3 part of the grant, as a single grant.

4 Q. Does it make a difference if you're on the accrual basis?

5 A. No. Whether you're on accrual or cash basis, rent is rent;
6 it's an indirect expense.

7 Q. And you had discussion so that -- what about an item
8 purchased before the grant, purchased let's say -- rent started
9 October 1st, 2001, an item that was purchased in the end of
10 September 2001 was delivered after the grant started in
11 October, paid for by year end, would that be an appropriate
12 expense attributable to the NIST grant?

13 A. Um, you'd have to ask NIST that question. I don't know.
14 Give me the specific item.

15 Q. Let's say a --

16 THE COURT: Let's not say. Let's give -- he wants a
17 specific item.

18 Q. An SGI computer?

19 A. If you contract with SGI to deliver a computer after the
20 start date of the grant, then yes.

21 If you contract with SGI to deliver the computer prior
22 to the start date of the grant, no.

23 Q. Now, you helped, did you not, prepare revised quarterlies
24 in this case?

25 A. Yes, I did.

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Benedict - cross

1 Q. And when did you do that?

2 A. They were ready in the middle of July, but as we were
3 working on the cover letter, they didn't get submitted till the
4 middle of August.

5 Q. Of '03?

6 A. Of '03.

7 Q. And they were actually submitted on August 13th, '03, the
8 same time you submitted the cover letter, correct?

9 A. Yes, sir.

10 Q. And what financials did you use to create the revised
11 status report? I believe it's 41A, 42A, 43A?

12 A. I used the monies that they drew down from ATP as the
13 expenditures, because that was the only thing that I could --
14 that was the only thing in the books that I could draw a line
15 to and say this is where the number came from. Anything else I
16 would've been guessing, and that would have been inaccurate as
17 the original reports.

18 Q. Well, when you arrived at CASI, the system was -- the
19 bookkeeping system was in disarray, correct?

20 A. Yes.

21 Q. Did you -- you looked at the records?

22 A. Yes.

23 Q. Yourself?

24 A. Yes.

25 Q. Was Ken Jackson Group involved at that time when you

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Benedict - cross

1 arrived?

2 A. Yes.

3 Q. And were they involved in creating new books for CASI?

4 A. They were -- I asked them to create an ATP set of
5 financials, which would mean reclassing data on the existing
6 system. It doesn't mean changing any numbers. It just means
7 putting it in a different bucket.

8 Q. And, in fact, when you said that Dr. Karron would go to the
9 computer, he would put stuff in a different bucket, right?

10 A. Yes.

11 Q. He wouldn't change anything, correct?

12 A. He would change the bucket.

13 Q. The bucket. But he wouldn't delete an expense?

14 A. No.

15 Q. Would he change what the expense was for?

16 A. No.

17 Q. As a matter of fact, he had invoices or backup for every
18 expense that he incurred, right?

19 A. They were all on that paper report system. I couldn't tell
20 you whether he did or he didn't. I just knew everything was
21 there.

22 Q. And when you spent time in New York, how much time did you
23 spend in New York?

24 A. I spent probably three days a month until the audits, and
25 then it was a week at a time.

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Benedict - cross

1 THE COURT: Full week you said?

2 THE WITNESS: Pardon me?

3 THE COURT: Five days a week?

4 THE WITNESS: Five days a week. The first, for the
5 first audit, and when the second audit came I believe I was
6 here for two consecutive weeks.

7 THE COURT: When you say the first audit, what are you
8 referring to there?

9 THE WITNESS: OIG came in in June, I believe, and
10 started something, and then it was broken for an OIG reason and
11 then she left and came back and completed it.

12 THE COURT: And when did she come back?

13 THE WITNESS: I believe in August.

14 THE COURT: I see.

15 Q. It was your understanding that you and Joan Hayes and Frank
16 Springs were to work together on the -- to chart the accounts
17 and create a new set of books for CASI?

18 A. It was my understanding that I was working with Frank
19 Springs and that Joan was an interested party, but not actually
20 involved in making any of the classifications on the books.

21 THE COURT: Why was she an interested party?

22 THE WITNESS: Because she's the auditor of -- for
23 CASI, and she would be interested in -- she had to file tax
24 reports and other financial data -- do an audit for Dr. Karron.

25 THE COURT: An audit for Dr. Karron?

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Benedict - cross

1 THE WITNESS: Uh-huh.

2 THE COURT: Of what?

3 THE WITNESS: Of both the ATP project and of CASI as a
4 corporation.

5 Q. Were you aware whether or not Joan Hayes was doing Dr.
6 Karron's personal taxes?

7 A. Yes, I was aware of that.

8 Q. And she was, correct?

9 A. I have no firsthand evidence that she was, but I learned
10 that in discussion.

11 Q. And when you would come to New York these three days a
12 week, would you go to --

13 A. That was once a month three days a week.

14 Q. Once a month three days a week, would you go to CASI?

15 A. Yes.

16 Q. Or would you go to Frank Springs?

17 A. No. I would go to CASI's first. I would periodically
18 spend time a day or so at Frank Springs.

19 Q. And did there come a time while Ken -- the Ken Jackson
20 Group was a bookkeeping group?

21 A. Yes, sir.

22 Q. And Springs was assigned to this project?

23 A. Yes.

24 Q. And did there come a time that checks started to bounce
25 with regularity?

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Benedict - cross

1 A. Not that I'm aware of.

2 Q. And is it your testimony that you recommended that the
3 bookkeeping be done off-site?

4 A. Yes.

5 Q. And when did you do that?

6 A. April, March April, 2003.

7 Q. Isn't it a fact that -- first, isn't it a fact that you
8 came aboard as working for CASI sometime in March of '03?

9 A. No. Came on board in January.

10 Q. And do you have any document that you could point to to
11 refresh your recollection about that or are you sure of that?

12 A. I'm relatively sure of that, because the budget amendment
13 was started in December of '02, and I was still working for
14 Axiom at that time.

15 Q. Let me show you what's marked as defendant's R for
16 identification and ask you if you recognize what's in
17 defendant's R for identification?

18 A. Yeah. It says March 1st.

19 Q. And is that an e-mail that you were c.c.'d on?

20 A. Yes.

21 MR. RUBINSTEIN: We'd offer defendant's R into
22 evidence, your Honor?

23 THE WITNESS: In reference to that e-mail address,
24 however, I didn't use it. So it's quite possible I never saw
25 that e-mail.

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Benedict - cross

1 MR. EVERDELL: Objection, your Honor. He can't
2 authenticate it.

3 THE COURT: What? Does it refresh your recollection?

4 THE WITNESS: No, sir. I don't recall seeing that
5 e-mail.

6 Q. Well, does it refresh your --

7 THE COURT: Do it refresh your recollection that you
8 faxed a document in March?

9 THE WITNESS: No.

10 THE COURT: The exhibit is not admitted.

11 (Continued on next page)

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8697KAR4

Benedict - cross

1 BY MR. RUBINSTEIN:

2 Q. Isn't it a fact that Dr. Karron suggested to you in March
3 of 2003 that the bookkeeping be moved off site?

4 A. I don't recall that, sir, no.

5 Q. And to your knowledge, how long was Frank Spring working on
6 the books of CASI?

7 A. He was there when I got there. I don't know how long he
8 was there before I got there.

9 Q. Did you use his numbers to submit your financial statement
10 revision?

11 A. I used the numbers that were drawn down from ATP, the
12 actuals.

13 Q. And did Frank Spring create some kind of spreadsheet
14 showing the actuals?

15 A. No.

16 Q. Now --

17 THE COURT: What do you mean you used the funds that
18 were drawn down from ATP?

19 THE WITNESS: This grant was not a reimbursement
20 grant, it was an advance grant, which means that as he needed
21 money he could submit a request to ATP for a certain amount of
22 money and they would send him the money, and in grant parlance
23 that's called drawing down.

24 THE COURT: Once the money was drawn down, your report
25 would reflect what?

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Benedict - cross

1 THE WITNESS: My report would reflect the amount of
2 money he took from ATP.

3 THE COURT: Drawn down.

4 THE WITNESS: Yes. What the report should have shown
5 was the amount of ATP money that was drawn down that was
6 actually spent on the grant, but since I couldn't tell because
7 everything was mixed together what was spent on the grant and
8 what was spent for other non-grant related items, I couldn't
9 accurately put any number in there, so the only accurate number
10 I could find that ATP might find some association with was the
11 draw-down.

12 Q. And this is in July or August of 2003?

13 A. Yes, July of 2003.

14 Q. And --

15 A. And you will notice that fourth quarter 2002, first quarter
16 2003 and second quarter 2003 reports were all submitted on that
17 date.

18 Q. Correct. August 13.

19 A. Yes.

20 Q. 2003. Now, these reports were submitted after --
21 withdrawn.

22 Were these reports, the revised financial statement
23 reports, submitted after you received the first report from
24 Riley, I think they called it a flash audit report? Had you
25 received that?

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Benedict - cross

1 A. I don't recall the exact date of that report, no, sir, but
2 I know that these reports were prepared in the middle of July.
3 I don't recall the date of the flash review.

4 Q. Well, did you receive it -- do you know if you received a
5 flash review as soon as it was submitted?

6 A. I don't know.

7 Q. Would July 3, 2003 refresh your recollection of the date of
8 the flash report?

9 A. No, sir, it doesn't.

10 Q. Now, did there come a time you received -- withdrawn.

11 Did Joan Hayes eventually complete her audit?

12 A. I have no idea.

13 Q. Did you ever see Joan Hayes' audit report?

14 A. No, sir, I haven't.

15 Q. Did you ever use the figures of Joan Hayes' audit report to
16 submit your revised financial statements?

17 A. No, sir, I didn't.

18 Q. Are you aware as you sit there now that Joan Hayes turned
19 over her audit report to OIG, Ms. Riley, in June of 2003?

20 A. No, sir, I'm not.

21 Q. And who are you asking for the numbers to put in in your
22 revised financial reports?

23 A. Frank. Frank Spring.

24 Q. Did you ever hear the expression Joanified?

25 MR. EVERDELL: Objection.

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Benedict - cross

1 THE COURT: Objection sustained.

2 Q. You tell us you went to a board meeting, correct?

3 A. Yes.

4 Q. How many board meetings did you go to?

5 A. One.

6 Q. And was that during the day or at night?

7 A. Night.

8 Q. And was in a restaurant or in a room somewhere, or both?

9 A. I believe it was in a room somewhere, and that we went to
10 dinner after the meeting.

11 Q. And that was the meeting at which you requested that the
12 checks be written off site, correct?

13 A. Yes, sir. We requested that checks be removed from the
14 CASI premises and moved off site.

15 Q. But they still had to be returned to Dr. Karron for him to
16 sign, right?

17 A. Yes, sir.

18 Q. Now, this PayPal account, that was a separate account,
19 correct?

20 A. It had to be. We didn't know anything about it at the
21 time.

22 Q. Well, the PayPal account was chargeable to Dr. Karron's
23 American Express card, correct?

24 A. The entry I saw was, yes.

25 Q. And were you aware that Dr. Karron had an American Express

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Benedict - cross

1 credit card?

2 A. A company American Express credit card, yes.

3 Q. Were you aware that he also had a personal Mastercard?

4 A. No, sir, I wasn't.

5 Q. Did you ever discuss with Dr. Karron at any time whether or
6 not he was using his Mastercard to purchase items on behalf of
7 the project?

8 A. No, sir, I didn't.

9 Q. Now, you say the PayPal expense that you saw. When was
10 that?

11 A. July, August. I don't remember exactly the date, but it
12 was after the board meeting.

13 Q. And was the amount over \$200 that you saw?

14 A. I don't remember the amount.

15 Q. Well, did you discuss it with Dr. Karron what he had
16 purchased?

17 A. All I remember from the discussion was that he said he had
18 to pay the bills.

19 Q. And that related to the PayPal.

20 A. That instance, yes.

21 Q. Is there anything that you could -- did anybody from the
22 prosecution show you any documents of the PayPal expenditures?

23 A. No.

24 Q. Let me show you what's been marked for identification as
25 Defendant's Exhibit Z.

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Benedict - cross

1 DEPUTY COURT CLERK: Z as in zebra?

2 MR. RUBINSTEIN: Yes.

3 THE COURT: The last number was U, I think.

4 MR. RUBINSTEIN: I wasn't sure, Judge. I didn't want
5 to get a double letter, so I went to Z to be safe.

6 THE COURT: Z for identification.

7 Q. I show you what's marked for identification as Defendant's
8 Exhibit Z and ask you whether that could refresh your
9 recollection as to what PayPal expense you observed on Dr.
10 Karron's American Express card statement.

11 A. No, sir, it doesn't.

12 Q. OK. Thank you. So it could have been as little as less
13 than a hundred dollars, right?

14 A. Yes, sir.

15 Q. Did you have experience and background with manuals,
16 preparation of manuals for companies, for benefits and things
17 like that?

18 A. No, not for benefits.

19 Q. Did you discuss with Dr. Karron the creation of a benefits
20 manual?

21 A. I don't remember specifically discussing a benefits manual,
22 but I do remember discussing written procedures.

23 Q. Was there a time while you were the business manager at
24 CASI that you spoke to an attorney or attorneys about employee
25 benefit programs?

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Benedict - cross

1 A. There may have been. As I said earlier in my testimony, we
2 did talk about trying to buy a handbook of some kind, and that
3 would probably have to be through an attorney.

4 Q. Well, did you have an e-mail address as benedict@casi.net?

5 A. I did, but as I said earlier I didn't use it.

6 Q. Well, let me show you what's been marked Defendant's OO. I
7 show you that document.

8 A. Yes, sir.

9 Q. Have you ever seen that document before?

10 A. Yes, sir.

11 Q. And when did you see that document?

12 A. It appears to be something that I started working on a
13 draft to try to put something in place, yes, sir.

14 Q. And did that relate to benefits for the employees of CASI?

15 A. Yes, it did.

16 MR. RUBINSTEIN: We offer OO into evidence.

17 MR. EVERDELL: No objection.

18 THE COURT: No objection? OO is admitted into
19 evidence.

20 (Defendant's Exhibit OO received in evidence)

21 THE COURT: Could I have a copy?

22 MR. RUBINSTEIN: Here is a copy for your Honor.

23 THE COURT: Thank you.

24 MR. RUBINSTEIN: I have an unorthodox sticker on it,
25 Judge.

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Benedict - cross

1 THE COURT: I will mark it OO.

2 Q. Now, you are aware that CASI had a budget line item in the
3 first year of \$110,000 for fringe benefits?

4 A. Yes, sir.

5 Q. And did they spend \$110,000 on --

6 A. I don't remember.

7 Q. And fringe benefits includes, does it not, withholding
8 taxes?

9 A. Yes, sir, it does.

10 THE COURT: It includes what?

11 THE WITNESS: Withholding taxes. FICO, FUDA, those
12 types of things.

13 Q. Did you have discussions with Dr. Karron as to whether or
14 not fringe benefits even without a manual could be allowable if
15 it was reasonable and evenhandedly applied across the board of
16 the company?

17 A. I don't recall that conversation.

18 Q. Are you saying it never happened?

19 A. No, sir, I'm not.

20 Q. In your view, is education deductible as a fringe benefit?

21 A. If it's related to the grant.

22 Q. Now, the rent that was paid was paid by CASI to the
23 defendant, correct?

24 A. I don't think -- I don't understand it that way.

25 Q. Well, there was a NIST account, was there not?

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Benedict - cross

- 1 A. No, there was a CASI account.
- 2 Q. Weren't there in fact four accounts?
- 3 A. Not on the books when I got there there weren't.
- 4 Q. Isn't it a fact that there was a NIST account in place and
- 5 checks were written from the NIST account?
- 6 A. Yes, checks were written from the NIST account. Everything
- 7 was written from the NIST account.
- 8 Q. But isn't it a fact the rent check was written from a CASI
- 9 Inc. account which was a green check?
- 10 A. All of the money that was in all of the accounts was NIST
- 11 money, so the color of the check didn't matter.
- 12 Q. Well, were there different colored checks?
- 13 A. I don't remember if there were different colored checks or
- 14 not.
- 15 Q. I am going to show you what is in evidence as defendant's
- 16 P-1 through P-6?
- 17 THE COURT: What's the exhibit?
- 18 MR. RUBINSTEIN: P-1 through P-6.
- 19 THE COURT: Have you ever seen those before?
- 20 THE WITNESS: No, sir, I have not.
- 21 Q. Did you ever ask Dr. Karron if he had contributed money to
- 22 CASI?
- 23 A. Yes. No, not to CASI. To NIST.
- 24 THE COURT: You said?
- 25 THE WITNESS: I never asked him if he contributed

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Benedict - cross

1 money to CASI; I only asked if he contributed money to NIST, to
2 the NIST project.

3 Q. Now, you do recognize those checks now that you looked at
4 them, do you not? Not as having seen them before, but that
5 those are checks that went to CASI.

6 MR. EVERDELL: Objection. He doesn't recall them.

7 THE COURT: Objection sustained.

8 Q. So, is it fair to say you never had occasion to look at Dr.
9 Karron's personal account?

10 A. Yes, that's true. They have nothing to do with the grant,
11 so I had no interest in it.

12 Q. If he was putting money into the company, the company's
13 only source of income was ATP, correct?

14 A. Yes.

15 Q. So, wasn't it important to see whether or not he made
16 contributions --

17 MR. EVERDELL: Objection.

18 Q. -- from his personal funds?

19 MR. EVERDELL: Objection.

20 THE COURT: If this is grounded on a hypothetical, I
21 will allow the question.

22 A. Repeat the question, please.

23 Q. Wasn't it relevant to determine whether or not he used
24 personal funds --

25 A. Only if I could see them in the NIST records. And they

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Benedict - cross

1 weren't in the NIST records, so, no, it wasn't relevant. I
2 don't care what he was doing with CASI money.

3 Q. Isn't it a fact that the expenses, the rent expenses were
4 paid out of CASI? Withdrawn.

5 How many checks -- rent was \$2,000 a month, correct?

6 A. I believe that's correct.

7 Q. How many of the \$2,000 checks were written out of NIST?

8 A. Since the only money was NIST money, all of them.

9 Q. Isn't it a fact -- well, when Dr. Karron would get a
10 paycheck, if he deposited the money in CASI --

11 A. I don't know what he did with his paycheck, sir.

12 Q. Because you never bothered to look at CASI.

13 MR. EVERDELL: Objection.

14 THE COURT: Objection sustained. Let's have the
15 question. That's not a question.

16 Q. Now, you had already told Dr. Karron he couldn't pay for
17 rent, correct, a number of times?

18 A. Yes, sir.

19 Q. And what months were these rent checks payable for?

20 A. I don't recall the specific months.

21 Q. Isn't it a fact that the majority of them were for pregrant
22 time before October 1, 2001?

23 A. There were some, yes.

24 Q. So that was not rent being paid for the grant time,
25 correct, if it's pregrant?

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Benedict - cross

1 A. Yes.

2 Q. And if it's paid out of CASI, it's not a NIST account and
3 it's not attributable to NIST.

4 THE COURT: Objection to the form of the question.

5 Q. In fact there came a time that either you or Ms. Hayes
6 convinced Dr. Karron that he couldn't deduct the rent from the
7 apartment because he lived there, correct?

8 A. I don't know anything about deductions. That has nothing
9 to do with the grant.

10 Q. Well, the rent would not be allowable.

11 A. It's not an allowable charge to the grant, but it has
12 nothing to do with what he can deduct or not deduct.

13 Q. Well, didn't you have a discussion about Dr. Karron moving
14 to Connecticut?

15 A. Yes, we did.

16 Q. And did Dr. Karron advise you that if he moved to
17 Connecticut then the entire rent should be allowable because
18 NIST was the only project in hand?

19 A. He may have said that, sir, but since it's not in the
20 budget it was a moot point. What he believed didn't matter.

21 Q. It was moot to you?

22 A. Yes, sir.

23 Q. It wasn't moot to him.

24 A. I don't know what --

25 MR. EVERDELL: Objection.

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Benedict - cross

1 A. I don't know what was relevant to him or not.

2 Q. Isn't it a fact that Dr. Karron after he -- he didn't move
3 to Connecticut, correct?

4 A. Not as far as I know, he did not.

5 Q. And when he did not move to Connecticut, isn't it a fact
6 that he stopped getting rent checks from either CASI or NIST
7 for the apartment?

8 A. I don't recall.

9 Q. Now, you told us before that utilities are also an indirect
10 cost, correct?

11 A. Yes, sir.

12 Q. Was there or was there not negotiations with ATP to permit
13 deductions for utilities?

14 A. I don't recall anything with utilities, sir.

15 THE COURT: You don't recall any such negotiations?

16 THE WITNESS: No, sir.

17 Q. Let me show you something and see if these documents --

18 Let me show you what's been marked for identification
19 as Defendant's RR.

20 THE COURT: For identification.

21 MR. RUBINSTEIN: Yes, your Honor.

22 Q. Take a look at these documents, sir, and see --

23 THE COURT: RR, I can allow him to look at that. If
24 you're showing him something else, we need to have
25 identification of it.

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Benedict - cross

1 MR. RUBINSTEIN: There are three documents, RR, RR-1
2 and RR-2.

3 THE COURT: What's your question, Mr. Rubinstein?

4 Q. Yes. My question is: By looking at those documents, does
5 that refresh your recollection, sir, that there were
6 negotiations going on with NIST ATP for allowing Dr. Karron to
7 be reimbursed for utility expenses?

8 A. Yes.

9 Q. And do you now recall those discussions going on?

10 A. I don't recall the specific discussions, but I do remember
11 there were, yes. And the discussions were that if he could
12 demonstrate the fact that there was an increase, that they
13 could be classified as direct expenses, not as indirect
14 expenses.

15 Q. Even though normally speaking utilities were never allowed,
16 correct?

17 A. Correct.

18 THE COURT: He could get the increase or the entire
19 utility amount?

20 THE WITNESS: The incremental amount of additional
21 expense caused by the grant could be classified as a direct
22 expense and not an indirect expense. Direct expenses are
23 allowed regardless of what they are. Indirect expenses are not
24 allowed.

25 Q. Now, did you have a discussion with Dr. Karron as to using

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Benedict - cross

1 equipment that he owned prior to the grant for cofunding
2 purposes?

3 A. Yes.

4 Q. And did you --

5 THE COURT: It's ten after. How much longer are you
6 going to be?

7 MR. RUBINSTEIN: About 20 minutes, Judge.

8 THE COURT: We will take the break and come back ten
9 minutes after two.

10 MR. RUBINSTEIN: Thank you, Judge.

11 THE COURT: The jury is excused.

12 (Luncheon recess)

13 (Continued on next page)

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Benedict - cross

1 A F T E R N O O N S E S S I O N

2 2:10

3 (Jury not present)

4 MR. KWOK: Just so the record is clear, I just amended
5 Government Exhibit 902, which is the proposed stipulation we
6 referred to earlier in the morning. That refers to Government
7 Exhibit 1000, which is a disk containing e-mails produced by
8 the defense. I have amended it to say Exhibit 1000 and 1000-A,
9 because subsequent to the signing of this stipulation we
10 received an additional CD, so now the proposed stipulations
11 will refer to both disks, and I have over lunch conferred with
12 Mr. Rubinstein's associate as to the e-mails we intend to
13 publish to the jury.

14 THE COURT: All right. And the stipulation has been
15 signed?

16 MR. KWOK: The proposed stipulation has been signed.

17 THE COURT: The first exhibit entry is 1000?

18 MR. KWOK: Yes. So, after that it would say
19 Government Exhibit 1000 and 1000-A, and then the second
20 paragraph it would now read, "If deemed relevant, Government's
21 Exhibits 1000 and 1000-A may be received in evidence."

22 THE COURT: And what does it say about defense
23 exhibit?

24 MR. KWOK: I think that can be crossed out.

25 THE COURT: Well, you better confer.

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Benedict - cross

1 MR. KWOK: And just so the record again is clear, the
2 words "Defense Exhibit" in paragraphs 1 and 2 are now stricken.

3 (Continued on next page)

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Benedict - cross

1 (Jury present)

2 THE COURT: Please be seated.

3 All right, Mr. Rubinstein.

4 MR. RUBINSTEIN: Thank you, your Honor.

5 ROBERT BENEDICT, resumed.

6 CROSS EXAMINATION (Continued)

7 BY MR. RUBINSTEIN:

8 Q. Now, did you make any submission to ATP on behalf of CASI
9 based upon cost share as an inkind contribution?

10 A. We submitted the revised reports and the new reports for
11 the fourth quarter of '02, first quarter and second quarter of
12 '03.

13 Q. And did you include in those reports the fact that Dr.
14 Karron, CASI, has contributed equipment that they previously
15 owned?

16 A. No.

17 Q. Were you aware of whether or not there was equipment that
18 was previously owned by CASI prior to obtaining the ATP grant?

19 A. I was not.

20 Q. Did you ascertain -- there were a number of computers in
21 the apartment on East 33rd Street, correct?

22 A. Yes.

23 Q. I mean they weren't the kind of computers -- were they the
24 kind of computers -- withdrawn.

25 Can you describe any of those computers for the jury?

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Benedict - cross

1 A. No, just that they were very large and very powerful.

2 Q. And do you know whether or not Dr. Karron expanded the
3 capacity of those computers?

4 A. I do not.

5 Q. Did you check any invoices to determine when any of those
6 computers were purchased?

7 A. There were some computers purchased during the grant
8 period.

9 Q. Did you determine whether all the computers --

10 A. No, sir, I did not.

11 Q. You are familiar, are you not, with the fact that you could
12 get credit for coshare contribution by using your own equipment
13 that you owned in the project?

14 A. Yes, sir, you can if it's included in the budget. There is
15 a 30 percent inkind allowance for cost share if you include it
16 in the budget.

17 Q. So you could take 30 percent of the value of the equipment
18 if it's includable in the budget.

19 A. Yes, sir.

20 Q. Did you ever ask Dr. Karron if any of the equipment that
21 was there was purchased prior to the budget?

22 A. He told me that there was.

23 Q. Did you ask him if he had any bills or invoices showing the
24 value of that equipment?

25 A. No, I did not, because it was not in the budget.

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Benedict - cross

1 Q. Did you request that that be included in the budgetary
2 revision or amendment?

3 A. At the beginning when we were doing the budget amendment I
4 did not.

5 Q. Well, did there come a time that you did?

6 A. I suggested another budget amendment, yes, in the June time
7 frame.

8 Q. Now, you mentioned about --

9 THE COURT: Was that amendment made?

10 THE WITNESS: No, sir.

11 Q. At the time you came to CASI, no budget amendment request
12 was acted upon, correct?

13 A. That's correct.

14 Q. And you told us that you became aware that Dr. Karron took
15 an advance on salary early on in the grant.

16 A. Yes, sir.

17 Q. And did you locate that in the books and records of CASI?

18 A. In the books that I looked at, yes, there was a salary
19 advance.

20 Q. And did you --

21 A. And Dr. Karron admitted that he had taken a salary advance.

22 Q. And in fact are you aware that in August of 2002, before
23 the end of the first year of the grant, that that advance was
24 adjusted in the books of CASI?

25 A. No, sir, I was not. Nor did Dr. Karron indicate that that

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Benedict - cross

1 had happened.

2 Q. Did he tell you that it happened?

3 A. No.

4 Q. Did you ask him?

5 A. I asked him about the \$75,000 advance, and he said, yes, he
6 had taken one. And when I asked him about it, he said he would
7 repay it. I saw no evidence that it had been repaid.

8 Q. Did you ever ascertain how much salary Dr. Karron had
9 received in the first year of the grant?

10 A. No. I wasn't there.

11 Q. Well, do you know what his budgeted item for his salary was
12 for the first year of the grant?

13 A. I believe it was in excess of 200,000. I don't remember
14 exactly what it was.

15 Q. So, if he received a gross amount of salary of about
16 \$35,000 on a \$175,000 salary, does that compute to you?

17 MR. EVERDELL: Objection.

18 A. I don't recall.

19 Q. Well, in your accounting experience, in your background,
20 ballpark figure, how much would a person who received \$175,000
21 in salary take home in take-home pay?

22 MR. EVERDELL: Objection.

23 THE COURT: Objection sustained.

24 Q. Do you know as you sit there now as to how much salary Dr.
25 Karron took home in the first year of the grant?

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Benedict - cross

1 A. No, sir, I do not.

2 Q. Let me show you what's in evidence as Defendant's FFF, and
3 I ask you have you ever seen those checks before.

4 A. No, sir, I don't recall them.

5 Q. Have you ever seen any checks from Dr. Karron's personal
6 account?

7 A. No, sir.

8 Q. Now, are you familiar with a term net operating loss?

9 A. Yes.

10 Q. What does that mean?

11 A. That means after taxes you have shown a loss in your
12 business.

13 Q. And can you carry that over to the next year so that if you
14 make a profit you can use that loss against a profit?

15 A. That's a tax issue; it's not a grant issue. I don't know
16 anything about that, sir.

17 Q. Are you aware of whether or not if you change the name of
18 your corporation, of your entity, whether or not you have to
19 notify the grant offices?

20 A. Yes, sir, you do.

21 Q. And do you know whether or not if you change the form of
22 your entity from a corporation, an Inc to an LLP, that you can
23 lose your net operating loss?

24 MR. EVERDELL: Objection.

25 A. It's a tax issue. It's irrelevant to the grant.

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Benedict - cross

1 Q. Well, I am asking you about it on a tax issue.

2 MR. EVERDELL: Objection.

3 THE COURT: Objection sustained.

4 Q. By the way, were payroll taxes paid by CASI?

5 A. Yes and isn't it.

6 Q. And isn't it a fact that when you -- what's a form 269
7 report?

8 A. That's the report you have to file with ATP on a quarterly
9 basis, identifying the amount of money you spent on the project
10 and the amount of money that you contributed to the project.

11 Q. And when you first joined CASI, did you assume that Dr.
12 Karron used his salary to meet his matching requirements of the
13 grant?

14 A. No.

15 Q. Well, do you recall swearing to an affidavit on September
16 27, 2006 at Southport, North Carolina -- is that where you're
17 from, sir?

18 A. Yes, sir.

19 Q. Let me show you what's marked as Government Exhibit 3506-B,
20 as in boy.

21 A. If Dr. Karron was paid with NIST funds, those can't be used
22 as matching contribution. You can't double dip.

23 Q. Do you see this document 3506-B?

24 A. Yes.

25 Q. Do you see your signature on the second page?

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Benedict - cross

- 1 A. Yes, I do.
- 2 Q. You swore to the truth of that?
- 3 A. Yes, I did.
- 4 Q. You read it over before you signed it?
- 5 A. Yes.
- 6 Q. Take a look where I have the S and see if that refreshes
- 7 your recollection as to what you told the agents.
- 8 A. Yes, it does.
- 9 Q. And in fact --
- 10 A. What I meant by that statement, sir, was that I assumed he
- 11 was using some of his CASI money, he was using money that was
- 12 paid to him personally for his work, and then he was
- 13 reinvesting that into the program. That was not the case.
- 14 Q. In fact you said he was using some of his salary to meet
- 15 the match requirements of the grant, correct?
- 16 A. Yes, as I just explained.
- 17 Q. Is that what you said?
- 18 A. Yes, sir, that's what I said.
- 19 Q. And to your knowledge, while Dr. Karron was working on the
- 20 ATP grant did he have any other salary?
- 21 A. No.
- 22 Q. So the only salary you could be talking about is the salary
- 23 he is getting from the ATP grant, correct?
- 24 A. Yes. But if I pay you and you turn around and use your own
- 25 money to reinvest it in the program, that would match. He did

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Benedict - cross

- 1 not do that.
- 2 Q. You don't know if he did or not.
- 3 A. There was no record of it in the ATP funds. There was no
- 4 record of any income coming from any source other than ATP.
- 5 Q. Where did he deposit his paycheck, sir?
- 6 A. In his own bank account, I guess.
- 7 Q. You guess.
- 8 A. I didn't pay any attention to his own accounts.
- 9 Q. And you didn't pay any attention to the CASI accounts and
- 10 the deposits he made, correct?
- 11 A. They were not relevant to the grant.
- 12 Q. But you said before all these funds were commingled,
- 13 correct?
- 14 A. Yes.
- 15 Q. And you see P-1 through P-6, the checks in front of you?
- 16 A. Yeah.
- 17 Q. You had never seen those before, had you?
- 18 A. No.
- 19 Q. But those were checks that went into CASI during the time
- 20 of the grant's first year, correct?
- 21 A. They're made out to CASI, yes.
- 22 Q. And you never saw them before.
- 23 A. No.
- 24 Q. So you missed them, right?
- 25 A. Checks made out to CASI don't mean anything. They're not

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Benedict - cross

1 relevant to the grant.

2 Q. What is CASI's -- what was CASI's only business during the
3 time of the grant?

4 A. The grant. But they were not deposited to the ATP project,
5 and the money he got for these checks came from the ATP
6 project, so you can't use ATP money to cover an ATP match. It
7 doesn't work that way.

8 Q. How about using --

9 A. The only money he had coming in was coming from ATP. Where
10 the money went is what's at question here.

11 Q. Yes. And you don't know where it went, right?

12 A. This money went to CASI.

13 Q. And if CASI paid ATP expenses, then it would be spent on
14 ATP.

15 A. Yes.

16 Q. But you don't know that because you never traced this
17 money, right?

18 A. No, I did not trace this money.

19 Q. You never traced where he put his salary or what he spent
20 his salary on, right?

21 A. If he spent it on ATP, he did not make that known to me
22 that he had done that, so I would not have gone looking into
23 his private accounts to see what he was doing.

24 Q. Well, didn't you rely upon Frank Spring?

25 A. I relied on the accounting transactions.

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Benedict - cross

1 Q. And wasn't Frank Spring also working on his personal taxes,
2 Dr. Karron's personal taxes?

3 A. Yes.

4 MR. EVERDELL: Objection.

5 A. But that again has nothing to do with the grant.

6 Q. That's up to the jury.

7 A. Yes.

8 MR. EVERDELL: Objection.

9 THE COURT: Objection is sustained.

10 Q. Now, you learned that the grant was suspended, right?

11 A. Yes, sir.

12 Q. Did you learn the grant was suspended because of a
13 violation of the copay?

14 A. We never really got an explanation why it was suspended.
15 It was suspended.

16 Q. After the grant was suspended -- well, withdrawn. At the
17 time the grant was suspended on June 27, 2003, were there any
18 monies owed to vendors for the grant?

19 A. I would assume so, yes.

20 Q. Do you have any idea what the number was?

21 A. No, sir, I don't.

22 Q. After the grant was shut down on June 27, 2003, isn't it a
23 fact that Dr. Karron advanced money to CASI for the purposes of
24 the grant?

25 A. I don't have any recollection of that, sir.

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Benedict - cross

1 Q. Were you involved at any time after the grant was shut down
2 with the telephone conference with Marilyn Goldstein?

3 A. No, sir.

4 Q. Do you know who Marilyn Goldstein is or was at that time?

5 A. Yes.

6 Q. And who was Marilyn Goldstein?

7 A. Marilyn Goldstein I believe was the manager of grant
8 compliance with ATP. I don't remember her specific title.

9 Q. And did you notify Hope Snowden in July, July 24, 2003 in
10 regards to Dr. Karron? I'm sorry.

11 THE COURT: What's the question?

12 MR. RUBINSTEIN: I will withdraw the question, Judge.

13 Q. Were you aware that Dr. Karron advised Hope Snowden that he
14 had arranged an emergency credit line to apply to the grant?
15 Are you aware of that, sir?

16 A. No, sir, I'm not.

17 Q. Did you receive an e-mail on July 24? This is marked as
18 Defendant's E for identification. Did you receive that e-mail
19 indicating that Dr. Karron was taking a line of credit to
20 advance to the grant?

21 A. No, sir, I don't remember seeing this e-mail. And as I
22 testified earlier, that casi.net e-mail address was one I
23 didn't use.

24 Q. Is it your testimony, sir, that you as the business manager
25 of CASI had an e-mail address and you did not check your

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Benedict - cross

1 e-mails?

2 A. Yes. I had a home e-mail address, and that's where we were
3 communicating. Periodically they would send things to
4 casi.net. They set up the account, they put a password on it.
5 And, as you know, flopping from one mail service to another is
6 a bit of a hassle, so I didn't use the casi.net service.

7 Q. But you were aware, were you not, sir, that there was an
8 e-mail address to you? You are aware there was one?

9 A. I was aware they set one up with a password that I didn't
10 know, so ...

11 Q. And were you aware that e-mails were coming to you?

12 A. Not there.

13 Q. 2008 is the first time that you became aware of the fact
14 that e-mails were sent to you at casi.net?

15 A. I have not seen this e-mail before.

16 Q. Did you see any e-mails that were sent to you?

17 A. Not to my recollection, casi.net, no.

18 Q. Well, when the grant was suspended June 27, 2003, how much
19 money was in the accounts of NIST or CASI?

20 A. I don't recall.

21 Q. Well, are you aware that there were people still working at
22 CASI after the grant was suspended?

23 A. Yes.

24 Q. And did you receive monies after the grant was suspended?

25 A. I believe so, I did, yes.

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Benedict - cross

1 Q. And did other people get paid from CASI after the ATP grant
2 was suspended?

3 A. I believe so.

4 Q. And are you aware of suppliers who had already delivered
5 product to CASI that were paid after the grant was suspended?

6 A. I don't specifically remember any, but I can't say that
7 that didn't happen.

8 Q. And did you have contact with Belinda Riley after the grant
9 was suspended?

10 A. Yes, sir, I did.

11 Q. And did you indicate to Belinda Riley that \$46,000 was
12 deposited by Dr. Karron and that 21,000 in kind he's claimed for
13 his FMV of his preowned equipment meets this obligation? Did
14 you tell that to Belinda Riley in an e-mail?

15 A. I don't recall that, sir, no.

16 Q. Well, let me show you this document.

17 I'm going to show you what's been marked for
18 identification Defendant's T.

19 THE COURT: Defendant's what?

20 MR. RUBINSTEIN: T as in Thomas, your Honor.

21 Q. I show you what's been marked as Defendant's T, sir, and
22 ask you if you recognize this e-mail.

23 A. Yes, sir, I do.

24 Q. Is that an e-mail that you sent to Frank Spring?

25 A. Yes, it is.

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Benedict - cross

1 Q. Did you send that on July 28, 2003?

2 A. Yes, I did.

3 Q. It's after the suspension of the grant?

4 A. Yes.

5 MR. RUBINSTEIN: We offer this into evidence.

6 MR. EVERDELL: No objection.

7 THE COURT: No objection?

8 MR. EVERDELL: No.

9 THE COURT: Exhibit T is admitted in evidence.

10 (Defendant's Exhibit T received in evidence)

11 MR. RUBINSTEIN: May I read this to the jury, your

12 Honor?

13 THE COURT: Yes.

14 MR. RUBINSTEIN: This is defendant's T in evidence.

15 It's from Bob Benedict at ec.rr.com to Frank Spring.

16 Let me put it up on the Elmo.

17 No, I'll read it. It's to Frank Spring. It says,

18 "Still sparring with NIST on the 67K."

19 67K means 67,000, correct?

20 A. Yes, sir.

21 Q. "I still contend the 46K he deposited and the 21K inkind he

22 claimed for the FMV of his preowned equipment meets this

23 obligation. We're supposed to get Belinda's preliminary audit

24 report today or tomorrow, and once that's in, we will know what

25 we plan to do and get ourselves operational again."

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Benedict - cross

1 Did you send that e-mail, sir?

2 A. Yes, sir.

3 Q. In fact you were aware when you sent this e-mail that Dr. K
4 had deposited at least \$46,000, correct?

5 A. Apparently, yes, sir.

6 Q. And you also were aware that you were claiming at least
7 21,000 in kind for the cofunding, correct?

8 A. Yes, sir.

9 (Continued on next page)

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869zkar5

Benedict - cross

1 Q. Now, you offered to handle the audit negotiations on behalf
2 of CASI, did you not?

3 A. You don't handle audit negotiations. You work with the
4 auditors. I was part of the team that was doing that.

5 Q. Well, did you advise Dr. Karron that you had prior
6 experience with audit negotiations?

7 A. Yes, sir.

8 Q. And that you had been successful in the past in audit
9 negotiations?

10 A. Yes, sir.

11 Q. And in fact, Doctor -- do you know a man named Mel Spitz?

12 A. No, sir.

13 Q. Did Dr. Karron retained you to handle the audit
14 negotiations, sir?

15 A. No, sir.

16 MR. RUBINSTEIN: No further questions.

17 THE COURT: All right. Redirect?

18 MR. EVERDELL: Very briefly, your Honor.

19 THE COURT: Could I ask a question before we get to
20 redirect? On your -- in the 3500A, the affidavit you signed
21 for the agency?

22 MR. RUBINSTEIN: Judge, I can't hear you. Sorry.

23 THE COURT: The affidavit you signed for the agency,
24 I'm trying to get the date, somewhere around the 15th of
25 November, 2004?

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Benedict - cross

1 THE WITNESS: Yes, sir.

2 THE COURT: Reviewing that affidavit, does that
3 refresh your recollection in any way that the meeting you met
4 Dr. Karron at was in October, not the Spring of 2001?

5 THE WITNESS: It could have been.

6 THE COURT: If you want to look at the --

7 THE WITNESS: I don't have it, sir.

8 THE COURT: -- exhibit?

9 THE WITNESS: I think the gentleman took it back.

10 MR. RUBINSTEIN: Here you go.

11 THE COURT: I just want to --

12 (Provided to the witness by Mr. Rubinstein)

13 THE WITNESS: Yes, sir.

14 THE COURT: Does that --

15 THE WITNESS: That is the correct date.

16 THE COURT: All right.

17 THE WITNESS: It must have been the fall conference,
18 not the spring conference.

19 THE COURT: The kickoff meeting.

20 THE WITNESS: Yes.

21 THE COURT: Okay. That's all I wanted.

22 REDIRECT EXAMINATION

23 BY MR. EVERDELL:

24 Q. All right, Mr. Benedict, I believe you testified on direct
25 and cross-examination that you told the defendant that he could

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Benedict - redirect

1 not use ATP funds to pay for rent; is that right?

2 A. Yes, sir.

3 Q. Do you remember, approximately, how many times you told him
4 that?

5 A. Half a dozen times.

6 Q. You testified also about getting approval for ATP expenses
7 that were not in the budget?

8 A. Yes, sir.

9 Q. How do those approvals come; are they orally or in writing?

10 A. In writing.

11 Q. Are they ever oral?

12 A. No.

13 Q. You --

14 A. They're not binding if they're oral.

15 Q. Okay.

16 THE COURT: Sorry, I didn't hear your answer.

17 THE WITNESS: I said they're not binding. If you get
18 oral authorization, do something, until you get written
19 authorization it's not binding.

20 Q. I believe you were also shown on cross-examination a draft
21 of a benefits plan?

22 A. Yes, sir.

23 Q. That's exhibits OO?

24 A. Yes, sir.

25 Q. You said you worked on that, is that right?

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Benedict - redirect

1 A. Yes.

2 Q. All right I want to show it to you. Is that the draft plan
3 that you said you worked on?

4 A. Yes, sir.

5 Q. What is the date of that draft plan, just right at the top
6 of the exhibit?

7 A. July 2nd, 2003.

8 Q. I'll take that back. That date, July 2nd, 2003, is that
9 before or after the grant was suspended?

10 A. After.

11 Q. You were also asked about utilities, I believe, on
12 cross-examination?

13 A. Yes, sir.

14 Q. To your knowledge, did any of the approved budgets for CASI
15 contain a line item for utilities?

16 A. No, sir.

17 Q. And you asked very recently on cross-examination about an
18 e-mail where you discussed an in kind --

19 A. Uh-huh.

20 Q. -- share for the defendant?

21 A. Yes.

22 Q. Was that revision, budget revision that you discussed in
23 the e-mail, ever approved?

24 A. No, sir.

25 MR. EVERDELL: No further questions.

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Benedict - redirect

1 MR. RUBINSTEIN: May I, your Honor?

2 THE COURT: Yes, you may.

3 MR. RUBINSTEIN: Thank you.

4 RECROSS EXAMINATION

5 BY MR. RUBINSTEIN:

6 Q. OO, is it your testimony, sir, that OO, this employees
7 benefit program, was created on July 2nd, 2003?

8 A. That's the date that's on there, yes, sir. I don't
9 remember the date it was created.

10 Q. Well --

11 A. It wasn't written all on that one day. It was something I
12 had been working for a while.

13 Q. I mean, this wasn't created because the grant was
14 suspended, was it, sir?

15 A. No. This was -- it was part of the -- there were no
16 procedures in place. We needed to get something in, some
17 procedures in writing so you could support the medical charges
18 that were being incurred.

19 Q. Did Dr. Karron say, you better sneak in a --

20 A. No, sir.

21 Q. -- a benefit, or our grant will be suspended, did he?

22 A. No, sir.

23 MR. EVERDELL: Objection.

24 THE COURT: Objection sustained.

25 MR. RUBINSTEIN: No further questions.

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Benedict - recross

1 THE COURT: Anything else?

2 MR. EVERDELL: Not from the government, your Honor.

3 THE COURT: All done? All right, witness is excused.

4 Next witness.

5 (Witness excused)

6 MR. KWOK: At this time, your Honor, the government

7 would like to read into the record a proposed stipulation.

8 THE COURT: All right. What's the number, stipulation
9 what?

10 MR. KWOK: It's marked for identification as

11 Government exhibit 902.

12 THE COURT: Read it.

13 MR. KWOK: United States of America versus Daniel B.
14 Karron, defendant. It is hereby stipulated and agreed by and
15 among the United States of America by Michael J. Garcia, United
16 States Attorney for the Southern District of New York, Steve
17 Kwok and Christian Everdell, Assistant United States Attorneys
18 of counsel, and defendant Daniel B. Karron, by and with the
19 consent of his attorney, Ronald Rubinstein, Esquire that: One,
20 the documents contained in the compact disk CD marked for
21 identification as government Exhibit 1000 and 1000 and --
22 1,000A and identified as e-mail for AUSA dated 5/31, 2008, are
23 authentic e-mails created at or near the time shown on those
24 documents are what they purport to be, and are admissible as
25 offered by the government under Federal Rules of Evidence

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Benedict - recross

1 801(d)(2) and 901; two, if relevant, government exhibits 1000
2 and Exhibit 1000A may be received in evidence.

3 It is further stipulated and agreed that the
4 stipulation may be received in evidence as a government exhibit
5 at trial, and it's dated July, I'm sorry, June 2nd, 2008 New
6 York, New York, and is signed on behalf the United States by
7 Steve Kwok, and on behalf Daniel B. Karron, by Ronald
8 Rubinstein, Esquire.

9 Your Honor, at this time government moves for the
10 admission of government exhibit 902, 1000, and 1000A.

11 THE COURT: Exhibit 902, excuse me, 902, and exhibits
12 1000, 1000A are admitted in evidence.

13 (Government's Exhibits 901, 1000 and 1000A received in
14 evidence)

15 THE COURT: Are you going to play those?

16 MR. KWOK: Yes, your Honor. Mr. Everdell will publish
17 some of those e-mails to the jury.

18 MR. EVERDELL: If we could have Government's Exhibit
19 203 on the screen, please. If we can highlight the third
20 paragraph.

21 MR. RUBINSTEIN: Your Honor, I ask that the entire
22 Exhibit be read.

23 THE DEPUTY CLERK: 203?

24 MR. RUBINSTEIN: In rule of completeness.

25 THE COURT: All right.

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Benedict - recross

1 MR. EVERDELL: Your Honor, the entire exhibit is in
2 evidence now. The jury can refer to it as they --

3 MR. RUBINSTEIN: But they have not heard it.

4 THE COURT: But they won't -- they will have copies in
5 the jury room, but they don't have copies in their books, I
6 don't think. Let's do it that way or by distribution.

7 MR. EVERDELL: All right. Start with 203. It's an
8 e-mail from Dr. D. B. Karron to Professor Schwartz. Dear
9 Professor Schwartz, I am in a very precarious position --

10 THE COURT: What date? Can we have a date for this?

11 MR. EVERDELL: Sorry. August 20th, 2003.

12 I am in a very precarious position in that the
13 government expects, demands and feels it is due the Joan Hayes
14 audit report. The grant specialist, Hope Snowden, told me in
15 no uncertain terms that the next things she needed to restart
16 the grant were replacement and up to date SF269's and Joan's
17 audit report. Her attitude was we paid for it, we expect it
18 and it, and the SF269 cash reconciliations were holding things
19 up for the review as to how to restart the grant. I had
20 already issued the stop work order, and Joan went to Hope and
21 got Hope's orders to complete payment or not.

22 THE COURT: Slow down a little bit.

23 MR. EVERDELL: Yes, your Honor.

24 Hope used the same attitude wording that Joan had used
25 with me, don't worry, we are paying for it. I went back to

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1 Joan and asked her to tell Hope when she thought the audit
2 would be done. My comments to Joan were to the effect that
3 Hope was sore and angry. Joan's reply was that I don't have
4 any problems with Hope. We get along just fine and don't you
5 worry about problem with Hope.

6 I've always had a good relationship with Hope and the
7 government in general. This attitude sent chills up my spine
8 because it indicates that Joan clearly sees her role as being
9 the Government's mole, not my accountant. I also decided to
10 hold off shit canning her by sic-cing you on her because it has
11 tremendous potential to back fire on me given Hope and Joan's
12 cozy relationship. Joan has clearly attempted to cement her
13 relationship with the government against me and is possibly the
14 biggest obstacle to getting your our grant restarted. When I
15 asked Joan when she could get the audit report done, she
16 started back peddling from her position that the audit report
17 was done to a position that she needed to delivery, excuse me,
18 the preliminary results to me in person without Bob Benedict or
19 any one else on my team. And as soon as I made a date to visit
20 with her, she could give me a better sense of when she would be
21 done. She went out to say that this was, that it was ironic
22 that I should attempt to fire her and now I was asking her for
23 more work or to work faster. She laced into me with comments
24 that this was a 40K audit she was losing money and she could
25 finish it on her own time, and as such, she would not be

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1 rushed. She kept saying she had orders from me, my letter from
2 Freddie, that she was to stop work. As such, she would work at
3 her pace and it was only her sense of duty to the government
4 that she would finish the audit at all. After the unusually,
5 after the unusually berating and obnoxious tugging on my
6 chains, didn't I say these things were going to happen? I
7 warned you, I told you, you did not listen, you thought you
8 could fire me, ha-ha, well, look who is begging now. You're
9 lucky I'm an honest auditor, not like so and so you had before.
10 I should have reported her before. The end of the conversation
11 was that Joan would contact Hope and give a completion date.
12 Two, Joan would report to me when she had promised a date to
13 Hope. 3, she would stick to that date.

14 I promised her I would send her a note ordering her to
15 complete the audit and she insisted on giving the audit results
16 only to me and make certain I understood each and every
17 finding. She would not give the audit report to Bob, fax them
18 to my office, e-mail them or overnight them to any location
19 other than to CASI. She said she did not trust the people in
20 my office, would not intercept the findings and so on. I send
21 Joan orders to deliver the audit findings to Bob and he would
22 work with her to get this done. I have seen a stream of e-mail
23 about the audit food notes that Joan wants me and only me to
24 write. At this point I don't know what I'm footing to. I Hope
25 Bob will send me a draft so I have a clue what I'm doing. My

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Benedict - recross

1 sense is that if I ask Joan to hurry up, she will slow down
2 even more. Since I have asked her to hurry up and that I am
3 out of town until September 1st, she won't complete until
4 September 1st. The worst news is that Marilyn Goldstein, the
5 grants manager, has indicated that what she has wanted was the
6 co-payment paid and her main problem was how to get it paid
7 during the suspension. I offered to pay some 67K of grant
8 bills pending, some of which are from vendors who may not even
9 get -- who may not even want to get paid. And she thought that
10 may solve the suspension issues, per amendment six. I asked
11 Bob to get this nailed down, i.e., a memo that payment of a
12 list of bills would restart the grant, and Marilyn would not
13 commit to this. So it is apparently another bear trap where we
14 throw away 67K and then get another bill, a bill for another
15 200K disallowed, and the match gets absorbed into disallowed
16 and we are still wedged and I'm almost completely out of
17 credit. Please talk to Bob Benedict for details on this very
18 dangerous situation. I am waiting abandoning the grant at this
19 point and forcing the government to try to collect one point
20 four million from me and make the grant enough of a train wreck
21 that they have to cooperate on finding a liveable solution for
22 all of us. It is that bad and I am ready to shove the
23 situation into such an unpalatable end that we get some
24 cooperation from them. Yes -- should I continue just to the
25 end of the e-mail, your Honor?

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Benedict - recross

1 THE COURT: Yes.

2 MR. EVERDELL: Okay. Yes, Joan Hayes was paid way
3 more than I was aware of, including a 1K retainer never
4 reflected in her billing. An extra payment on her last audit
5 invoice bringing the total paid to date for the audit of almost
6 13,500. If I give you the go ahead, we should sue to recover
7 for nonperformance \$13,500 and damages caused by
8 nonperformance, as well as anything else you can think of. Her
9 two sons are lawyers and auditors, and she has threatened that
10 if sued it would not cost her anything to defend herself with
11 her family. She has threatened to bury me in legal problems
12 should I try to interfere with her John Val John like mission
13 to put me out of business and get me disbarred at the federal
14 teet. At this point feel I have to reign you in and not appear
15 to the government to block Joan's completion of her appointed
16 task if she continues to hang on my neck with this audit and
17 won't commit to a completion date or misses her own completion
18 date, then I will give you the go ahead to drop an atomic bomb
19 on her head, as well as certain legal death on myself.
20 Finally, I've been discussing a benefits retirement plan with.
21 And that concludes that e-mail.

22 THE COURT: All right. More slowly for me, all right.

23 MR. EVERDELL: Yes, your Honor.

24 Next Government's Exhibit 204. This is an e-mail from
25 D. B. Karron to several people, including Jerome Schwartz, date

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Benedict - recross

1 August 12th 2003.

2 THE COURT: Has Joan Schwartz been or Mr. Schwartz
3 been identified in this case or --

4 MR. EVERDELL: Not yet, your Honor.

5 THE COURT: All right. Go ahead.

6 MR. EVERDELL: All right. Reading from the beginning
7 of the e-mail:

8 We are going to give Joan the boot, as it has to be
9 hard, fast and sufficiently threatening so she stops
10 collaborating with the Inspector General. But she does not
11 decide to turn State's evidence and really put me out of
12 business more than she has already. Since she knows how to get
13 under my skin, and I like to be the nice guy, I propose that a
14 partnership resolution disengaging Joan and engaging Spitz be
15 produced, and a discharge order that will get her off my case
16 and she will be happy to turn over her work papers and wash her
17 hands of me.

18 I propose, one, she be held to the letter of her
19 engagement letter, copy attached, she was to change -- charge
20 \$10,000. She was overpaid. She should refund that. Two, she
21 never completed the audit by the engagement letter deadline.
22 She should refund \$10,000. Three, she missed so many tax
23 deadlines that she should be discharged as a tax attorney of
24 record, be held liable for late fees and so on. Four, answer
25 charges of malfeasance or stupidity my spectacular over payment

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Benedict - recross

1 of 120 to 150K withholding taxes, for example; five, failure to
2 institute any kind of tax shelters; six meddling in management
3 making de facto management decisions without written
4 authorization or framing the problem and asking for written
5 authorization; seven, using personal knowledge gained from
6 being on-site at CASI virtually daily at some points; i.e.,
7 personal residence, medical knowledge gained from using her
8 knowledge of my personal taxes, spending too much time being
9 friends with employees and using the gossip to disallow costs
10 to the government; eight, she should be held responsible for
11 disallowance of the cost of her students benefits, her student
12 was paid, but she later disallowed; nine, refusal to certify
13 CASI business process after expending tremendous resources to
14 recreate books; 10, government using the disallowed she shows
15 on the books as a basis for deception on the part of the P. I,
16 as he should have shown prior to doing the SF269 in error
17 because it is so clear on the books, the effort to recreate the
18 books has back fired and it appears that the P. I made willful
19 statements of fact evident on their own books, has the audit
20 report been completed on time. This apparent bad faith would
21 have been voluntarily correction instead of discovery by the
22 Inspector General; 11, her failure to complete anything on time
23 has caused the effective bankruptcy of her client.

24 THE COURT: All right. 2003 and 2004. All right, any
25 more?

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Benedict - recross

1 MR. EVERDELL: Yes, your Honor.

2 MR. KWOK: Yes, your Honor.

3 MR. EVERDELL: One more, your Honor. This is

4 Government's Exhibit 213.

5 THE COURT: Dates on these?

6 MR. EVERDELL: Yes, this is an e-mail from Dr. D. B.

7 Karron to someone named T. L. Lorraine at AOL.com. It's dated

8 December 18th, 2002.

9 THE COURT: What was the date of -- 2004?

10 MR. EVERDELL: This e-mail?

11 THE COURT: Yes.

12 MR. EVERDELL: December --

13 THE COURT: 204, excuse me.

14 MR. EVERDELL: Oh 204 was --

15 THE DEPUTY CLERK: August 12th, '03?

16 THE COURT: August 12th.

17 THE DEPUTY CLERK: August 12th, '03.

18 MR. EVERDELL: August 12th, 2003.

19 THE COURT: Thank you.

20 MR. EVERDELL: This one is December 18th, 2002.

21 Lorraine, I understand your position fully. If you

22 can provide material and vital assistance to CASI, me, during

23 our audit, then you will have a job. I have real concerns as

24 to whether you can provide this help, and if I can pay you what

25 you are worth. My concerns are that you have the technical

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Benedict - recross

1 expertise and the patience to fully exercise it. This is major
2 bookkeeping and accounting crap. I stand to lose a lot of
3 money out of pocket. You will be working with our auditor and
4 accountant Joan Hayes preparing documents for her audit. I
5 have a big list of things that need to be prepared. I need
6 mountains of documentation organized, I need lots of things
7 followed through that the auditor and I have discussed. My
8 failure to have these things ready for her will mean I have to
9 pay for these things out of pocket. I am looking at a grant
10 short fall of about 60K which I have to make up out of my
11 pocket. I have a mountain of business records my secretary was
12 supposed to organize for the audit. She did not do it and now
13 I have to pay for it. I need someone to do it. I was going to
14 hire a temp to do it, I will cover you to do it.

15 Now, you are a difficult person to work with. You are
16 a pain in the butt, you drink, you smoke, you are combinatoric
17 and argumentative, you are spaced out, you forget things. You
18 talk too much when you don't know what you're talking about.
19 You say too little when you really know what you're talking
20 about. I was not going to engage you after all the crap at
21 Janet's, I was going to engage you after the meeting with
22 Satava. I thought it was more important that you get a more
23 high paying job with these folks at Greenbelt so I did not
24 discuss it with you. I discussed your involvement with friends
25 who know you and most railed against it. I --

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Benedict - recross

1 THE COURT: I'm trying to read as you do it. I think
2 the jury may be with you. The person who someone moved the
3 e-mail, so you can't read it. Could you move it back so we
4 can --

5 MR. EVERDELL: I think we're at the -- okay, the last
6 was friends who know you and most railed against it. Now we're
7 on, it may destroy.

8 It may destroy our friendship by my bringing you on as
9 an employee. I don't mix friendship and employment. I don't
10 think it is a good idea that we have a personal relationship
11 while you work for me. It is not a good idea that you stay in
12 my bed if you work here a few days a week. I live in a
13 goldfish bowl. Nevertheless, if you help me through this audit
14 for the next month, give me a solid few weeks intense work and
15 learning and I survive this grant, you will have a job. Peter
16 and I need to focus on getting a number of new grants. A lot
17 of writing needs to be done. A lot of research needs to be
18 done. A lot of travel between New York and D.C. needs to be
19 done. If you impress myself, my board and Peter, you will
20 become a partner not just an employee. One of the things we
21 need to do is formalize the employee benefit plan so as to make
22 a T* friendly company, and formalize the employee equity
23 participation plan I have in mind for sometime now. These
24 there are significant problems you can fix. Joan will brief
25 you on them and we will dig in and you work on them with me

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Benedict - recross

1 then and on your own. I need to focus on research and our 1Q
2 report due December 31st. We are falling behind on our
3 milestones because of my continuing distraction with the audit
4 and business problems. If you become a problem to manage, you
5 will be asked to leave. If you can do what we need done, you
6 will become a partner and you participate in each new grant and
7 contract we win. I suggest you give up the hotel room, stay
8 here with me a few days a week and I will ask Windy to put you
9 up at her house. You can get your cell phone calls forwarded
10 to there. I am thinking of opening a retreat office at Wendy's
11 house, so I can get some work done now that she has thrown
12 Corrine out. If I promise to cover your rent, I may formally
13 move into Windy's house so that I can collect rent on my
14 apartment from the grant. In that case, you will be staying
15 both here and at Windy's and so there are two place for two
16 people. I will make a lease with Windy and make like I only
17 keep a folding bed on 33rd Street. If ATP buys into this idea,
18 then I can charge my rent on the apartment to the grant and pay
19 my mortgage. So I'm contradicting most of my previous
20 statements by taking you on and into my life, but if I don't
21 get these problems solved, I won't have a grant.

22 Further, I won't make a contract with you until I am
23 convinced you are the girl for the job. You have to spend a
24 lot of time with the auditor fixing each audit problem. You
25 have to learn my electronic records system and how to use it.

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1 You need to master our bookkeeping style and record keeping.
2 You have to learn, if you are not already familiar with them,
3 the FAR, Federal Acquisition Rules, and cost principles.
4 Convince me you are on my side and the girl for the gig and it
5 is yours for real. I have been burned, burn too many times in
6 the past. I will help you out out of pocket, as best I can
7 while you are with me, but without formal approval for a
8 subcontract with you from the feds, I can't make a formal offer
9 to you. I was yelled at by my grant specialist at NIST over
10 making personnel changes without their approval. One thing you
11 will do is interface with me at NIST and learn how to navigate
12 multiple rolling budget changes with them so you can get your
13 approval to work under my grant. If you do this right, you
14 will be working directly with the government and write your own
15 ticket with me them, plus end up with equity for in the company
16 when we finish the employee benefit plan, which you will help
17 write. Hugs Diane.

18 THE COURT: I thought this was supposedly -- I'm
19 sorry, I thought that this was from the defendant?

20 MR. EVERDELL: It is from the defendant's e-mail
21 address, D. B. Karron.

22 THE COURT: I see, all right.

23 All right, do you need to read anything else?

24 MR. KWOK: One moment, your Honor?

25 MR. RUBINSTEIN: Are they excluding the next --

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1   there's another, there is the original message there.  Are
2   we --
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3 MR. EVERDELL: Just --

4 THE COURT: You want something else read in?

5 MR. RUBINSTEIN: I don't know, Judge. I'm just asking
6 if that's part of --

7 THE COURT: I couldn't hear your answer. You want
8 something read in?

9 MR. RUBINSTEIN: It's not necessary, your Honor.

10 MR. EVERDELL: Your Honor, the government rests.

11 THE COURT: All right, the government rests.

12 Is defense ready to put on a case?

13 MR. RUBINSTEIN: Let me -- can I step outside, your
14 Honor?

15 THE COURT: All right. What?

16 MR. RUBINSTEIN: Okay.

17 THE DEPUTY CLERK: One of the jurors --

18 THE COURT: We'll take a jury break, Mr. Rubinstein.
19 We'll take a jury break. Okay. 10 minutes.

20 (Recess)

21 THE COURT: Are we ready for the jury?

22 MR. KWOK: Yes, your Honor.

23 THE COURT: Get the jury.

24 (Jury present)

25 THE COURT: All right, please be seated.

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1 Mr. Rubinstein.

2 MR. RUBINSTEIN: Yes. My assistant went to get the
3 witness, your Honor.

4 THE COURT: All right.

5 MR. RUBINSTEIN: Sorry. I'm sorry. The witness is
6 sitting in the back of the courtroom like I told him to. I
7 forgot I told him.

8 THE COURT: All right.

9 THE DEPUTY CLERK: Watch your step.

10 WILLIAM NICOLAI,

11 called as a witness by the defendant,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RUBINSTEIN:

15 THE COURT: All right, go ahead.

16 Q. What is your business or occupation, Mr. Nicolai?

17 A. I am a vice-president of Halstead Property, which is a real
18 estate company in New York.

19 Q. And are you licensed?

20 A. Yes, I am.

21 Q. And how are you licensed?

22 A. Licensed as a real estate broker.

23 Q. And how long have you been so engaged?

24 A. I've been a broker at Halstead since 1989.

25 Q. And before that?

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Nicolai - direct

1 A. I used to develop sports programs for kids with cerebral
2 palsy.

3 Q. Now, and where is your brokerage located?

4 A. We're in Manhattan. My particular office is at 77th and
5 Third.

6 Q. And how long have you been in Manhattan as a real estate
7 broker?

8 A. My whole career as a broker.

9 Q. And as a broker, do you make brokers appraisals?

10 A. We do brokers appraisals, yes.

11 Q. And what is a brokers appraisal?

12 A. Brokers appraisal would be, basically, the same thing as an
13 appraiser would do, but we're not certified by the State. We
14 use our knowledge, we use all of the same information and same
15 sources to arrive at a price for an apartment.

16 Q. And do you do that -- and why do you do that?

17 A. We do it quite often when somebody comes to us and asks if
18 we'd like to sell their apartment, or they tell us they're
19 thinking about selling an apartment, what would it be worth or
20 sometimes for estates when somebody has died and the estate
21 needs some sort of a value of the property.

22 Q. Do you know the defendant, Dr. Karron?

23 A. I met him, yes. He lives in my building.

24 Q. And what building is that, sir?

25 A. In Kips Bay, 300 East 33rd Street.

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Nicolai - direct

- 1 Q. And how long have you lived there?
- 2 A. I've lived there since 1984.
- 3 Q. And do you have --
- 4 A. I'm very stable. What?
- 5 Q. Do you have any position with the building?
- 6 A. None whatsoever.
- 7 Q. And have you have you had listings from the building?
- 8 A. I've sold at least 20 apartments there.
- 9 Q. And did you have occasion to list Dr. Karron's apartment,
- 10 apartment 4N?
- 11 A. Yes, I did.
- 12 Q. And where -- how did you -- tell the jury how you go about
- 13 listing?
- 14 A. How I what?
- 15 Q. How do you go about -- did you have an exclusive?
- 16 A. Yes, I had the exclusive on the listing.
- 17 Q. And what does that mean?
- 18 A. That means that I was the one broker that controlled the
- 19 apartment, and anybody who wanted to see it, every broker had
- 20 to call me and arrange to see it through me. I was the
- 21 controlling broker.
- 22 Q. And how are you paid as a broker?
- 23 A. We're paid a commissioning based on the sale. If you sell
- 24 it as a co-broke, your company splits the commission. If you
- 25 sell it yourself, your company gets the whole commission and

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Nicolai - direct

1 it's divided with your company.

2 Q. And you get a set amount or percentage of the sales price?

3 A. It's percentage of the sales price.

4 Q. So the higher you sell it for the more you make?

5 A. Yes.

6 Q. Now, did you have occasion to list Dr. Karron's apartment?

7 A. Yes, I did.

8 Q. And what when was that?

9 A. You mean what price?

10 Q. When?

11 THE COURT: When are we talking about?

12 A. Oh, we -- I'm sorry.

13 THE COURT: When?

14 Q. Yeah. When did you list the apartment?

15 A. I think it was probably last October, something like that.

16 Q. And what did you list it at?

17 A. We list it at \$650,000.

18 Q. And what were apartment, comparable size apartments selling
19 for at that time in that location?

20 A. Comparable apartments were selling in the seven's.

21 Q. And when you say seven --

22 A. 700's, yeah, seven and a quarter, 740, 750.

23 Q. Thousand?

24 A. Hundred thousand, yes. And we thought that -- we thought
25 this was a high price, but we thought we'd get people in and

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Nicolai - direct

1 see if we could get more money, because my job is basically to
2 get as much money as I possibly can for the apartment. So we
3 listed at 650,000 which I thought was high.

4 Q. And why if similar apartments in the same building were
5 selling for over 700,000, why did you list this apartment for
6 \$650,000?

7 A. Dr. Karron had taken a residential apartment and basically
8 turned it into a laboratory. There were really no vestiges of
9 what you would consider as a, as a normal residential
10 apartment. It was, basically, all lab. It had desks built all
11 around the apartment, no things like sofas, just kind of office
12 chairs where you could pull up to computers and monitors.
13 There was a, basically, a mattress on the floor and a hammock
14 running across the room where people could sleep, and it was
15 basically it. The rest of it is all work. And we felt that it
16 would take a lot of money to convert this apartment back
17 because of the -- back to a residential apartment because of a
18 lot of things he did to it.

19 Q. And did you, eventually, did you show this apartment to
20 people?

21 A. I showed it a lot.

22 Q. And did you eventually find a buyer?

23 A. I did find a buyer, yes.

24 Q. And when was that, sir?

25 A. We found a buyer, I guess earlier this year.

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Nicolai - direct

1 Q. And had, from the time you started listing the apartment in
2 October, till the time you found a buyer, did you change the
3 offer price?

4 A. We lowered it to 610,000, and we had a little more interest
5 in it, but I showed it at least -- I must have shown it 40
6 times.

7 Q. And what was the eventual sales price for this apartment?

8 A. Eventual says price was 510,000, but it was all cash. We
9 didn't have to get a bank involved into it, so we didn't have
10 to worry about an appraisal coming or anything like that. And
11 it was bought by somebody on board because there were certain
12 circumstances regarding the apartment that it just worked out
13 well to have somebody on the board buy it. Now, he found it
14 because I had listed the apartment in the laundry room, not
15 because, you know, because he knew anything about it. He saw
16 it listed and came to see it and expressed an interest in it.

17 Q. And does this person own other apartments in the building?

18 A. Yes, he does, and he lives in the building.

19 MR. RUBINSTEIN: I have no further questions.

20 THE COURT: Any cross-examination?

21 CROSS EXAMINATION

22 BY MR. KWOK:

23 Q. Good afternoon, Mr. Nicolai.

24 A. Hello.

25 Q. Have you heard anything about the Advanced Technology

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869zkar5 Nicolai - cross

1 Program; do you know anything about it?

2 A. No, I don't.

3 Q. Do you know about the rules and regulation governing this
4 program called Advanced Technology Program?

5 A. I don't know what it is.

6 Q. Did you have any dealings at all with a company called
7 CASI?

8 A. No.

9 Q. Around 2001 to 2003?

10 A. No.

11 MR. KWOK: No further questions.

12 THE COURT: Anything further?

13 MR. RUBINSTEIN: No, your Honor.

14 THE COURT: All right, you're excused. Next witness.

15 THE WITNESS: Thank you.

16 (Witness excused)

17 MR. RUBINSTEIN: Your Honor, defense calls John Mason.

18 THE COURT: All right.

19 JONATHAN MASON,

20 called as a witness by the defendant,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. RUBINSTEIN:

24 THE COURT: Please proceed.

25 Q. Mr. Mason, good afternoon?

869zkar5

Mason - direct

1 A. Good afternoon.

2 Q. Did we ever meet before?

3 A. Just today.

4 Q. And what is your business and occupation, sir?

5 A. I'm a carpenter, builder.

6 Q. And do you know the defendant, Dr. Karron?

7 A. I do.

8 Q. And do you see him in court?

9 A. I do.

10 Q. And where do you see him?

11 A. (Pointing)

12 MR. RUBINSTEIN: Indicating the defendant, your Honor?

13 THE COURT: Yes, the witness has identified the
14 defendant, the record will so reflect.

15 MR. RUBINSTEIN: Excuse me, your Honor. I have to get
16 something from the witness.

17 Q. Now, what is your business and occupation please?

18 A. I'm a builder.

19 Q. And when did you meet Dr. Karron?

20 A. About three years ago.

21 Q. And do you have accompany?

22 A. Yes, I do.

23 Q. And what's the name of your company?

24 A. Bator Bintoer, Incorporated.

25 Q. And how long?

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Mason - direct

1 THE COURT: I'm sorry, I couldn't catch the name.

2 THE WITNESS: It's Bator Bintoer.

3 Q. And how long have you had that company?

4 A. 15, 17 years.

5 Q. And do you have a specialty?

6 A. Um, no. I'd say we're more general. We've done a few
7 different things and we sort of different times had, you know,
8 been focused on different things. But mainly now we just do
9 contracting, fix apartments, that sort of thing.

10 Q. And how did you come to meet Dr. Karron?

11 A. Someone I knew told me that a friend of theirs was looking
12 for some work to be done, and I went and introduced myself to
13 Dr. Karron.

14 Q. And did that result in you doing some work in apartment 1N
15 at 300 East 23rd Street?

16 A. It did.

17 THE COURT: 1N or 4N?

18 MR. RUBINSTEIN: I'm sorry, 4N, 4N.

19 Q. And --

20 THE COURT: Could we have a date?

21 Q. Yeah. Do you recall when it was that you, or withdrawn.
22 Did you make a written agreement or this was verbal?

23 A. No, there was a written agreement and I had to get, you
24 know, we got some insurance papers and things and -- I mean it
25 was a little while ago. I'm not completely up on all my jobs

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Mason - direct

1 from four years ago, but, you know.

2 Q. Well that's a standard thing to get insurance when you do

3 work inside of --

4 A. Yeah.

5 Q. -- a coop building?

6 A. Yes, it is. Mostly to work in any coop building you have

7 to show your workers comp and work liability insurance.

8 Q. Do you have to meet with anybody from the building before

9 you are permitted in to work?

10 A. No. They just want to see the paperwork. I mean, I think

11 like I did -- I probably did at some point talked to some of

12 the building management at the beginning whenever we were

13 sorting out the paperwork, but.

14 Q. What kind of work did you do in apartment 4N?

15 A. Mostly I was working on -- I mean, I guess you'll know his

16 apartment was like a computer laboratory. So mainly we like,

17 we put lots of runners on the walls that held all the screens.

18 One of the big jobs that we did was we made a ventilating

19 system for the computers, because in the summer it had a lot of

20 problem with the computers overheating, so we like built racks

21 to put all the computers in. And then I built -- like we got

22 these fans, extractor fans, you know, built it, sealed it off

23 so that the air from behind the computers was immediately

24 sucked out to the outside and, and air condition there could be

25 pulled in.

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Mason - direct

1 Q. What is extractors?

2 A. Yeah, extract -- we are extracting the hot air from behind
3 the computers like and venting it outside. And then we had air
4 conditioners and stuff in the front of the computers so that,
5 you know, it would be cool air going through the computers.

6 Q. So what kind of -- did you have to do any structural work?

7 A. No, it wasn't structural work.

8 Q. Did you have to break the wall or anything?

9 A. No, no.

10 Q. And how long did the job take?

11 A. Well, I mean there was like -- as I said, there was a
12 couple of different things that I did. And I would say like
13 all in all, like it was like maybe a month's worth of work,
14 maybe a bit less. But, you know, it wasn't all done like one
15 day to the next, you know. It wasn't like in one thing. There
16 was like space, we did some I think one project. Then we
17 actually built the ventilation system once, and then we had to
18 retake it down, and like it didn't really work out, so like a
19 month later we like took it down and did it again, you know,
20 and we changed the fans and stuff that we used.

21 Q. Now, did you fill out time sheets on this job?

22 A. I did, actually, which actually was a sort of a bone of
23 contention between me and Dr. Karron. Because I told him I
24 never filled out time sheets before. I mean, usually I make a
25 bill and, you know, that's, that's what it is. But Dr. Karron

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Mason - direct

1 was quite insistent. So I think we did fill out time sheets.

2 Q. And did you sign those time sheets?

3 A. I'm sure I did.

4 Q. Now, let me show you what's marked as defendant's MM for

5 identification. I show you what's been marked MM for

6 identification and ask you if you recognize what that document

7 is?

8 A. I do. It's a time sheet it's got my signature on.

9 Q. And how many of those did you fill out during the time you
10 were working there?

11 A. A bunch.

12 MR. RUBINSTEIN: We offer MM into evidence, your
13 Honor.

14 MR. KWOK: No objection.

15 THE COURT: Any objection?

16 MR. KWOK: No objection.

17 THE COURT: No objection? MM is admitted in evidence.

18 THE DEPUTY CLERK: That's MM?

19 MR. RUBINSTEIN: MM.

20 THE COURT: MM.

21 (Defendant's Exhibit MM received in evidence)

22 Q. I show you what's marked as MM-1 and MM-2 and ask you if
23 you recognize what is depicted in these exhibits?

24 THE COURT: What exhibits are you showing?

25 MR. RUBINSTEIN: MM-1 and MM-2.

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Mason - direct

1 Q. Do you recognize anything in there, Mr --

2 A. Yeah, I do. I mean it's not the greatest of pictures, but
3 yeah I do, I do recognize this is like the main room with the
4 book shelves and the table and the stuff on the ceiling.

5 Q. And --

6 A. Yeah, this is, this is -- and this one is like equipment.

7 Q. Tell us what number you're looking at on the blue little
8 sticker?

9 A. Yeah. MM-1.

10 Q. Okay.

11 A. And these look like black and white shots of like his
12 apartment.

13 Q. Does that fairly and accurately reflect the way the
14 apartment looked at some point when you were working there?

15 A. Yeah. I mean, they're not the greatest pictures, but yeah,
16 I would say so. I mean, I can recognize the stuff.

17 Q. Do you see the work you did in those pictures?

18 A. Yeah.

19 MR. RUBINSTEIN: We offer MM-1 into evidence.

20 MR. KWOK: No objection.

21 THE COURT: No objection? MM-1 is admitted in
22 evidence.

23 (Defendant's Exhibit MM-1 received in evidence)

24 Q. All right. Now take a look at MM-2. First give me MM-1.

25 I'm going to put it up on the thing here. Is that one?

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Mason - direct

1 A. Yeah.

2 Q. Thank you. Okay. Can you describe what we're looking at
3 in MM-1?

4 A. Yeah, I guess this --

5 Q. Could you start on --

6 A. It's hard to tell. It could be either room, but both rooms
7 are pretty much the same. I think actually this is what -- so
8 called the bedroom because it has the book shelves still on.

9 Q. Did you do work in the bedroom?

10 A. Not so much. Actually, I did -- I -- actually, I did put
11 some -- I put these things on the ceiling, the slide thing on
12 the ceiling.

13 Q. And what's that for?

14 A. The ones I put on were for like -- we had like lights that
15 like went along the desk, and they were like long flexible
16 things. They attached to the track on the ceiling. And they
17 were so that you could direct the light to work on the
18 computer. You know, we had like a bunch, so they like were
19 behind you. And the idea was the, you know, you could like
20 adjust it to like, you know, adjustable lighting so that you
21 could have for people to work and stuff.

22 Q. All right. Now in MM-2, what do you recognize in that
23 photograph.

24 A. I mean it looks like the computer racks again. It's not
25 the easiest, 'cause it's black and white, not the easiest thing

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Mason - direct

1 to see, but this one looks like some of the computer racks that
2 we built.

3 Q. Did you build those in the living room?

4 A. Yeah, built them in the living room.

5 MR. RUBINSTEIN: We offer MM-2 into evidence, your
6 Honor.

7 MR. KWOK: No objection.

8 THE COURT: MM-2 is admitted in evidence.

9 (Defendant's Exhibit MM-2 received in evidence)

10 Q. Could you describe what's depicted in the top photograph of
11 MM-2?

12 A. The top one, I don't know. I think I need a -- I mean, it
13 looks like equipment on the floor. I don't know what those
14 lights are on the side. I'm not quite sure what that is of.

15 Q. And how about the second photograph?

16 A. The second one looks like the racks that we built, like
17 it's kind of a closeup shot of them, but like it looks like we
18 built like these sliding racks where the computers they slide
19 in, and that's where we had the ventilation system. Like what
20 he tried to do was put all the computers together and like --
21 and then like cool, like take the air out from behind the
22 computers so that it was like cooling them. So like you don't
23 need these big racks like standing up like, and they have the
24 screws on the front, the pieces slide in so that you can like
25 slide, they're kind of on like rails so you can like slide out

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Mason - direct

1 the equipment to get to the wires in the back and stuff, and
2 then slide the it back in, you know. So like if it needs to be
3 maintained or whatever, taken out, it can be taken out without
4 the whole thing being taken apart.

5 Q. Could you describe the computers?

6 A. Well, I'm not a computer expert, but there were a lot of
7 them, you know, and it was very professional looking, you know.
8 I mean, Dr. Karron made plans like for how everything was going
9 to go. And mostly they're like sort of like long kind of thin
10 machines that like slide like, they like, they're kind of built
11 for these racks I think, or the racks are built for them. But
12 they have like a face. They're quite like deep and stuff and
13 they like clip them onto these runners and they like slide into
14 the rack, so.

15 Q. And what time would you generally work at the apartment?

16 A. Nine to five. You know, the buildings have codes. You
17 can't -- you can like -- you have to abide by the building's
18 rules, which is usually nine to five.

19 Q. And were people working while you were there?

20 A. Yeah.

21 Q. Now, what other work did you do; did you do any other work
22 in the living room?

23 A. In the living room, yes. What did we do? Well we did -- I
24 did the light system like, as I told you about in the bedroom.
25 We had the lights that came down from the ceiling. We also put

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Mason - direct

1 some racks up. One of them held like a air purifier and
2 things. I did like a lot of the, the stuff that Dr. Karron
3 couldn't really do, because it was physical and more
4 construction orientated like putting the rails up on the
5 ceiling. You know, you have to drill with the, with a concrete
6 drill and everything, 'cause the whole building is concrete,
7 and stuff like that.

8 But usually I was -- I mean, Dr. Karron made the
9 instructions and made the plans of what he needed, and then I
10 tried to accommodate him as best as I could.

11 Q. He drew the plans for your --

12 A. He made the plans -- yeah. He, I mean, he -- I didn't
13 design the stuff. He designed the stuff and I was just mainly
14 installing and, you know, what came up. I'm not a computer
15 designer or anything.

16 Q. Now, your company, you set a price initially for the job?

17 A. Yeah.

18 Q. And what is that; what did you charge?

19 A. I'm sorry, I can't remember like off hand. I haven't
20 really -- I haven't been -- studied it, you know, for coming
21 here. I mean, I do a lot of jobs. I can't remember what
22 everything was. But I mean I -- we billed -- you know, there
23 were bills for everything so that I could get paid, and I'm
24 sure it must be all on record.

25 Q. And did you get paid?

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Mason - direct

- 1 A. I did get paid, yeah.
- 2 Q. Now --
- 3 A. Sometime.
- 4 Q. Dr. Karron paid?
- 5 A. Yeah, I mean or the -- actually, usually I would actually
- 6 get paid by the accountant. You know, he would have to clear
- 7 the check whatever, but he would actually write the check, the
- 8 accountant would write the check or, you know, maybe someone he
- 9 was working for, who is working for him. Like sometimes I like
- 10 coordinated with Mat a lot. Mat's kind of like his right hand
- 11 person, does a lot of stuff for him.
- 12 Q. For Dr. Karron?
- 13 A. Yeah, for Dr. Karron. So I would, you know, like -- 'cause
- 14 Dr. Karron was often very busy. You know often like mainly I
- 15 went through Mat for things, you know.
- 16 Q. All right. Did you have occasion to do any other work
- 17 outside of the room where the computer was?
- 18 A. Yeah, we -- I changed the cabinet in the kitchen and the
- 19 sink cabinet, and that was pretty much the only thing we did in
- 20 there.
- 21 Q. And did you charge separately for that?
- 22 A. Dr. Karron was very insistent that like that work had to be
- 23 paid by a check from himself, which he wrote, as opposed to the
- 24 accountant or anybody.
- 25 Q. And let me show you -- I show you what's marked defendant's

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Mason - direct

1 MM-3. I show you what's been marked for identification as
2 defendant's MM-3 and ask you if you recognize what's depicted
3 in that exhibit?

4 A. Yes. It's a check to my company Bator Bintoor.

5 MR. RUBINSTEIN: We offer that in evidence.

6 MR. KWOK: No objection.

7 THE COURT: MM-3 is admitted in evidence.

8 (Defendant's Exhibit MM-3 received in evidence)

9 (Continued on next page)

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8697KAR6

Mason - direct

1 BY MR. RUBINSTEIN:

2 Q. What work was performed that generated that bill?

3 A. This is for the cabinet, for putting the cabinet in the
4 kitchen.

5 Q. And how much did you charge for the cabinet in the kitchen?

6 A. \$620.

7 MR. RUBINSTEIN: Let me publish it to the jury, your
8 Honor.

9 THE COURT: OK.

10 Q. Let me show you what's -- let me show you this check marked
11 MM-4. And that is a personal check from Dr. Karron?

12 A. Yeah, because the other checks say CASI on them.

13 Q. Let me show you what's been marked as MM-4 and ask you if
14 you can identify what's been marked for identification as MM-4.

15 A. Yeah, it's a check to Bator Bintoor from Computer Aided
16 Surgery for \$1766.66.

17 Q. And that was for work done inside the living room portion
18 that you testified to?

19 A. Yes.

20 THE COURT: Are you offering MM-4 into evidence?

21 MR. RUBINSTEIN: Yes, I'm offering MM-4 into evidence,
22 your Honor.

23 THE COURT: Any objection?

24 MR. KWOK: No objection.

25 THE COURT: MM-4 is admitted into evidence.

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Mason - direct

1 (Defendant's Exhibit MM-4 received in evidence)

2 MR. RUBINSTEIN: I want to publish it to the jury.

3 THE COURT: I don't think anybody can read that.

4 MR. RUBINSTEIN: Should I walk it around to the jury?

5 While the jury is looking at that, I am going to show

6 you what's marked for identification as Defendant's MM-6.

7 THE COURT: What MM-5?

8 DEPUTY COURT CLERK: You're not using 5?

9 MR. RUBINSTEIN: That's not 5?

10 THE COURT: 5 hasn't been admitted into evidence. If
11 it's 5, you have a problem.

12 MR. RUBINSTEIN: There is no 5, Judge.

13 THE COURT: OK.

14 Q. All right. Take a look at what's been marked as
15 Defendant's MM-5. Do you recognize what's depicted?

16 A. Yes, it's one of my invoices.

17 THE COURT: This is 5 or 6?

18 MR. RUBINSTEIN: 5.

19 THE COURT: What you are showing the witness is 5, not
20 6?

21 MR. RUBINSTEIN: Yes, your Honor.

22 THE COURT: OK, it's now 5. Please go ahead.

23 A. Yeah, it's probably one of my first invoices. It's for the
24 purchase and install of exhaust system for the computer network
25 hub. It's for \$2,000. It says 50 percent deposit required

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8697KAR6

Mason - direct

1 before work commences.

2 Q. And did you receive that money?

3 A. I'm sure I did, yes.

4 MR. RUBINSTEIN: We offer MM-5 into evidence.

5 MR. KWOK: No objection.

6 THE COURT: Was this paid, or \$1,000 paid?

7 THE WITNESS: This must have been before I started the
8 work. I usually get 50 percent deposit, or when it's done or
9 different stages I get the rest of the money.

10 THE COURT: You did get paid on this.

11 THE WITNESS: Yes. I mean like in my books.

12 THE COURT: MM-5 admitted into evidence.

13 (Defendant's Exhibit MM-5 received in evidence)

14 Q. Let me show you what's marked for identification as MM-6
15 and MM-7 and ask you if you can identify what's depicted in
16 those two items, sir.

17 A. OK. MM-6 is a time sheet for 21 hours, I think, and then
18 the other one is another time sheet that I must have filled out
19 for Dr. Karron.

20 Q. And those are the time sheets you filled out?

21 A. Yeah.

22 Q. And how often do you fill out a time sheet for Dr. Karron?

23 A. Every week that I was working there.

24 Q. And how often would you get paid?

25 A. I can't remember exactly, but I mean I think like I got

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Mason - direct

1 paid -- I got paid as like work was completed or work was due,
2 you know. He gave me the money at the beginning, and I might
3 have got paid like sometimes at the end of the week too. But
4 it was a little confusing because with the time sheets it's
5 kind of like I'm an employee but I wasn't really an employee,
6 it's my own business. But, as I said, he wanted me to do the
7 time sheet, so I did the time sheets, but I also built in for
8 the work I had done. So I mainly went off my bills for him.

9 THE COURT: Where did you get the time sheet?

10 THE WITNESS: Dr. Karron provided them. I don't
11 usually do time sheets for anybody else. Usually I write my
12 invoice and then, you know, if it gets changed, I get payments
13 as the work gets done. That's normal procedure.

14 Q. Now, the time sheets, we offer them in evidence, your
15 Honor, the time sheets.

16 MR. KWOK: Can I just take a look?

17 THE COURT: MM-6 and MM-7.

18 MR. KWOK: No objection.

19 THE COURT: No objection, MM-6 and MM-7 admitted into
20 evidence.

21 (Defendant's Exhibit MM-6 and MM-7 received in
22 evidence)

23 Q. Do those time sheets also indicate the type of work that
24 you did?

25 A. Yeah, roughly like they say some things.

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Mason - direct

1 Q. Tell us what number you are looking at.

2 A. Either one. It says --

3 Q. Could you see the number on the little sticker?

4 A. Yeah. MM-6, this has to do with time that I spent on it
5 says hot air duct dump, but I know that means the ventilation
6 system for the computers.

7 Q. And how much time did you spend on that?

8 A. I spent quite a lot. This one says 21 hours, but I think I
9 spent more than that. It was quite a complicated little thing,
10 and as I said we had to work out the bugs. As I said, usually
11 how it works is he tell me what to do, I do it, then he tells
12 me what he didn't like about it, and then I would have to fix
13 whatever he didn't like about it.

14 Q. Were you working alone or with other people?

15 A. Well, I worked alone for my company, but like when we
16 did -- when I worked on the computer racks and stuff, he had
17 some, I think they were like students, but he often had like
18 people come in, helping computer guys helping him with the
19 computer stuff, like students or something.

20 Like when we did the racks, like I had somebody help
21 me as I'm not particularly that knowledgeable on the computer
22 side. You know, my side was more like building the racks and
23 making everything, so he had someone else there who was like
24 hooking up the computers to see if they worked, and like
25 running all the wires, and I would like trip up the wires or

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Mason - direct

1 stuff. But like I didn't know how to hook up the computers or
2 anything. He had somebody else doing that stuff.

3 There were always a couple of people. Matt was always
4 there working, and there were a couple of other people usually
5 working on the computers. And then like he would have like
6 student guys like there, and they would either be working on
7 stuff for the computer for him, or sometimes they would like
8 help me and stuff.

9 Q. Did you pay them, the ones that helped you?

10 A. Sorry?

11 Q. Did you pay them?

12 A. No, I didn't pay them.

13 Q. I am going to show you what's marked as -- do you recall
14 whether or not the checks -- the color of the checks you
15 received?

16 A. Were the same? You mean like his check and the other
17 check?

18 Q. Correct.

19 A. No, I think they were different. I mean I can't remember.
20 I think the Computer Aided Surgery ones were all pink. It was
21 a little while ago, and I think --

22 Q. Let me show you what's MM-8 for identification. Do you
23 recognize what's contained there?

24 A. Yeah, it's a check from Computer Aided Surgery to Bator
25 Bintoer for \$1,082.

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Mason - direct

1 THE COURT: 8 hasn't been admitted in evidence.

2 MR. RUBINSTEIN: No, I'm offering it in evidence.

3 MR. KWOK: No objection.

4 THE COURT: All right. 8 is in evidence.

5 (Defendant's Exhibit MM-8 received in evidence)

6 Q. Now you can discuss it.

7 A. Yeah, it's a check written to my company from Computer
8 Aided Surgery for \$1,082.67.

9 Q. I show you what's Exhibit MM-9 and ask you if you could --
10 if you recognize what is contained in that exhibit.

11 A. Yeah, MM-9 is another check to Bator Bintoer but this one
12 is from Dr. Karron for \$200.

13 Q. Do you know what you did for that \$200?

14 A. Probably that was still something to do with doing the
15 cabinet in the kitchen. You know, that maybe that came later
16 because I had to hook up his water filtration system.

17 THE COURT: You had to do what?

18 THE WITNESS: It was like in the cabinet. He had like
19 a water filtration system, and when I put it back I think I had
20 to charge extra because it was quite complicated to put it
21 back.

22 Q. Now, do you recall when you finished doing work for Dr.
23 Karron?

24 A. I'm not the greatest at dates, but as I said I think the
25 whole thing went on a couple of months.

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Mason - direct

1 Q. And when you finished your job, were you owed money?

2 A. I probably was owed a little bit of money. I can't
3 remember exactly, but usually, you know, it always takes a
4 little time to get paid. I never got paid from anybody
5 straight away, but Dr. Karron was pretty good. I mean I got --

6 THE COURT: Let's just answer yes or no if you can.

7 THE WITNESS: OK, sorry.

8 A. In my books I'm fully paid by Dr. Karron. He never really
9 owed me any money over a long period of time or anything.

10 Q. There are checks and invoices for any work you did for Dr.
11 Karron, is that correct?

12 A. Yes.

13 Q. OK. I am going to show you -- this is the last one I'm
14 going to show you. It's Defendant's NN-1 and NN-2. Sorry.
15 There are three exhibits. There is NN, NN-1 and NN-2. I show
16 you these exhibits and ask you if you recognize these three
17 exhibits, sir.

18 A. Yeah, it's a check made to Bator Bintoer for --

19 Q. Don't discuss it. It's not in evidence yet.

20 THE COURT: Do you remember each of these checks?

21 Q. Do you recognize it?

22 A. Yeah, I think so. I don't know. This one is from CASI LLC
23 which mainly I remember them being CASI. But maybe this was
24 one of the first ones. I'm not sure. But, yeah, it's a check
25 made to me.

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Mason - direct

1 Q. Take a look at NN-1. Do you recognize what that is?

2 A. Yeah, it's one of my invoices.

3 Q. Take a look at NN-2.

4 A. OK. Yeah, this is another one of my invoices.

5 Q. And we offer NN, NN-1 and NN-2 into evidence.

6 MR. KWOK: No objection.

7 THE COURT: No objection. Received.

8 (Defendant's Exhibits NN, NN-1 and NN-2 received in
9 evidence)

10 Q. Now, those three exhibits, the NN exhibits, do they relate
11 to one particular episode, in other words, the work, the check
12 and what have you?

13 A. Yes. I would say these all relate to working on the
14 exhaust system, because I can see the machine shop for the
15 handles, which I remember happening.

16 Q. Now, does it show the date the work was done on your
17 invoice?

18 A. Yes.

19 Q. What date was the work -- tell us what exhibit you are
20 looking at.

21 A. I am looking at NN-2.

22 THE COURT: As in Nancy.

23 MR. RUBINSTEIN: Named for my wife. We had an
24 anniversary last week.

25 A. Yeah, to 6/20, 6/27 and 7/04 the week after that.

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Mason - direct

1 Q. What year?

2 A. '03.

3 Q. What were you paid?

4 A. 8 17 03.

5 Q. And how much were you paid?

6 A. 2,600.

7 MR. RUBINSTEIN: I have no other questions.

8 CROSS EXAMINATION

9 BY MR. KWOK:

10 Q. Good afternoon, Mr. Mason.

11 A. Good afternoon.

12 Q. You said you got paid for your work?

13 A. I did.

14 Q. You also testified a moment ago you got checks both from

15 Dr. Karron personally and from CASI, is that right?

16 A. That's correct.

17 Q. With respect to the CASI checks, you didn't know where that

18 money came from, did you?

19 A. No. I mean what do you mean do I know where that money

20 came from?

21 Q. All you knew is it came from CASI. You don't know where it

22 came from earlier.

23 A. No.

24 Q. Would you bring your own tools when you went to Dr.

25 Karron's place?

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8697KAR6

Mason - cross

- 1 A. Absolutely.
- 2 Q. Did you go to a hardware store to buy additional items that
- 3 you needed?
- 4 A. I did.
- 5 Q. Did you go to a place called Homefront Hardware Store?
- 6 A. Often.
- 7 Q. Did you go to that store for this project?
- 8 A. I did, yes.
- 9 Q. Did you go there on or about June 16, 2003?
- 10 A. Quite possibly.
- 11 Q. Do you remember buying something called Combat Roach Gel
- 12 Bait at that hardware?
- 13 A. Combat Roach Gel Bait? Is that like roach, antiroach
- 14 things?
- 15 Q. Could I show you something that would refresh your
- 16 recollection?
- 17 A. Yeah.
- 18 Q. I am showing him, your Honor, Government Exhibit 101, page
- 19 20 of 21.
- 20 A. It says my name.
- 21 Q. Does that refresh your recollection why you bought Combat
- 22 Roach Gel Baits on June 16, 2003?
- 23 A. I would imagine I put them in the kitchen cabinet because
- 24 there were probably roaches.
- 25 Q. For this project, for the defendant?

8697KAR6

Mason - cross

1 A. Yeah.

2 Q. Do you know how that was paid for, the items that you
3 bought from the hardware store?

4 A. I presume -- let me think. How was that paid for?
5 Sometimes I had to pay for it myself, depending -- it was
6 always a little awkward. He had an account there, but he
7 didn't always pay up with his account, so sometimes I went
8 there and they wouldn't let me put stuff on the account, so
9 then I would just have to pay cash, which if it was a little
10 amount I would do. Other than that, like mostly like if the
11 account was open I could put it on the account.

12 Q. For the items that you put on the account, as you said, do
13 you know how those eventually got paid for?

14 A. No.

15 Q. You don't know what money went to pay for those items?

16 A. No.

17 Q. Are you familiar with a program called Advanced Technology
18 Program, Mr. Mason?

19 A. Sorry?

20 Q. The Advanced Technology Program, ATP?

21 A. No.

22 Q. Did you at any time have any knowledge about the internal
23 financial situation of the defendant's company, CASI?

24 A. No.

25 MR. KWOK: No further questions for this witness.

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Mason - cross

1 THE COURT: Mr. Rubinstein? Any redirect?

2 MR. RUBINSTEIN: Just one second, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. RUBINSTEIN:

5 Q. How much was spent on the Combat Roach purchase at the home
6 front hardware?

7 A. Well, I don't know exactly, but they're not very expensive,
8 a few dollars. I mean it's roach traps.

9 Q. And do you have the invoice in front of you there?

10 A. I don't. I think they took it back.

11 THE COURT: It's just shown to him to refresh his
12 recollection?

13 MR. KWOK: That's right.

14 THE COURT: It doesn't have an exhibit number. It
15 should be marked actually. You should mark it as an exhibit.

16 A. It says 9.99.

17 Q. Is that \$999?

18 A. No, \$9.99.

19 Q. Thank you.

20 A. It's roach things, you know.

21 MR. RUBINSTEIN: No further questions, your Honor.

22 THE COURT: All right. All done with this witness?

23 You are excused. I'm going to excuse the jury first until 9:30
24 tomorrow morning. I hope it's not too hot out there. Maybe
25 you want to stay.

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Mason - redirect

1 (Jury not present)

2 THE COURT: All right. You may step down.

3 (Witness excused)

4 THE COURT: What do we have for witnesses tomorrow?

5 MR. RUBINSTEIN: Well, we sent the insurance man home,

6 and we sent Ms. LeClerc, told her she is not testifying, so we

7 have tomorrow character witnesses, Mr. Cox and potentially the

8 defendant. I think we should be finished tomorrow, Judge.

9 THE COURT: Oh, really? OK. And the rebuttal? Are

10 you going to have any rebuttal, do you think?

11 MR. EVERDELL: At this point, your Honor, I don't

12 think we contemplate anything.

13 THE COURT: Should we have a charging conference

14 tomorrow night?

15 MR. RUBINSTEIN: Yes, your Honor.

16 MR. KWOK: Yes.

17 MR. EVERDELL: Yes.

18 THE COURT: OK. Thank you very much then. Nothing

19 else to take up.

20 MR. RUBINSTEIN: No, your Honor.

21 MR. KWOK: No, your Honor.

22 (Trial adjourned to June 10, 2008 at 9:15 a.m.)

23

24

25

1

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GOVERNMENT EXHIBITS

17	Exhibit No.	Received
18	901, 1000 and 1000A	1082

19

DEFENDANT EXHIBITS

20	Exhibit No.	Received
21	U	1032
22	OO	1050
23	T	1074
24	MM	1107
25	MM-1	1108

1	MM-2	1110
2	MM-3	1114
3	MM-4	1116
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86A7KAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

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4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

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6 Defendant.

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8 June 10, 2008

9 9:30 a.m.

9

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15

United States Attorney for the

16

Southern District of New York

16

BY: STEVEN KWOK

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CHRISTIAN EVERDELL

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Assistant United States Attorneys

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Attorneys for Defendant

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BY: RONALD RUBINSTEIN

20

20

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21

Kirk Yamatani, U.S. Dept. of Commerce

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86A7KAR1

1 (Trial resumed; jury not present)

2 MR. RUBINSTEIN: I do have an objection to your
3 Honor's suggestion yesterday as to your proposed charge.

4 THE COURT: I will have the proposed charge for you in
5 ten minutes. I don't know what I suggested yesterday.

6 MR. RUBINSTEIN: Yesterday you said in substance the
7 way you read the statute the "without authority" phrase applies
8 to both the misapplication of funds as well as the conversion
9 of funds.

10 THE COURT: I thought the government was going to
11 object to that, not you.

12 MR. RUBINSTEIN: Well, I think your Honor is actually
13 amending the indictment, because the government opened and
14 their theory is misapplying government grant funds, and that
15 should be the basis of the charge, and not to include any other
16 language that might broaden that concept. And I cite --

17 THE COURT: That's the whole point of the "without
18 authority". After all, he could give himself authority to do
19 anything with CASI's funds. That's the whole point.

20 MR. RUBINSTEIN: It's not directly on point, your
21 Honor, but it does raise the issue from the Second Circuit,
22 U.S. v. Zvi.

23 THE COURT: Well, let me see it. Let me see the case.
24 I don't know this case. U.S. v. what?

25 MR. RUBINSTEIN: Zvi. I have a copy without the first

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1 page. I will give you the first page, Judge. Here is a copy
2 of the --

3 THE COURT: What year was this?

4 MR. RUBINSTEIN: 1999, Judge Walker.

5 THE COURT: It was not cited to me. We will have the
6 charging conference. I will take it into account then.

7 MR. RUBINSTEIN: But I think, Judge, off the record --

8 THE COURT: Oh, I see. Zvi. This is filing false
9 income tax returns.

10 MR. RUBINSTEIN: I know, but there is language about
11 constructive amending of the indictment.

12 THE COURT: Oh, the indictment isn't amended; the
13 indictment is right there. You look at the indictment. I
14 looked at it over the weekend. It's got the words of the
15 statute right in it, and it quotes the words of the statute.
16 We will take it up in the charging conference.

17 MR. RUBINSTEIN: Also, judge there is a case of U.S.
18 v. Millstein that I will give to the court.

19 THE COURT: Millstein Brothers? The former real
20 estate magnates?

21 MR. RUBINSTEIN: I don't know about that, Judge.

22 THE COURT: You must have heard of Millstein.

23 MR. RUBINSTEIN: Of course I've heard of Millstein.

24 THE COURT: I don't think that was this type of case,
25 but I will look at any case you've got.

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1 MR. RUBINSTEIN: Thank you, Judge. I will hand up
2 the --

3 THE COURT: How are we doing on the jury, Robert?

4 DEPUTY COURT CLERK: I think we're good.

5 MR. RUBINSTEIN: Judge, we're not good.

6 DEPUTY COURT CLERK: We have the 14.

7 THE COURT: Where is your client? Call the client.

8 MR. RUBINSTEIN: Yes, your Honor.

9 THE COURT: He's asleep again?

10 OK. Here he is.

11 (Continued on next page)

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86A7KAR1

1 (Jury present)

2 THE COURT: Good morning. Please be seated. Ladies
3 and gentlemen, Ms. Brown called in, and her knee was swollen up
4 so she was unable to walk, so I gather she is all right but
5 it's something that she has to take care of. Accordingly, I
6 will ask Mr. Bracero to take Ms. Brown's seat as Juror 12.

7 I don't think there is anything else to say before we
8 start the morning. So, Mr. Rubinstein, your next witness.

9 MR. RUBINSTEIN: Yes. Defense calls Dr. Edgar Coons.

10 EDGAR E. COONS,

11 called as a witness by the defendant,

12 having been duly sworn, testified as follows:

13 DEPUTY COURT CLERK: Please state your name and spell
14 your last name slowly.

15 THE WITNESS: My name is Edgar E. Coons. My last name
16 is spelled C-O-O-N-S. And I am informally known as Ted. I'm a
17 professor at NYU.

18 DIRECT EXAMINATION

19 BY MR. RUBINSTEIN:

20 Q. Good morning, Dr. Coons. You say that you are a professor
21 at NYU. How long have you been affiliated with New York
22 University, sir?

23 A. Since February 1965.

24 Q. And is that continuous?

25 A. Yes.

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Coons - direct

- 1 Q. And what is your academic background, sir?
- 2 A. Well, as an undergraduate I graduated from Colorado
- 3 College. I got my Ph.D. at Yale in physiological psychology.
- 4 Q. And what year was that that you received your Ph.D.?
- 5 A. 1964.
- 6 Q. And are you a full professor at NYU?
- 7 A. I am a full professor, yes.
- 8 Q. And what department are you in?
- 9 A. I'm in psychology, and I have a joint appointment in the
- 10 Department of Psychology and Center for Neuroscience.
- 11 Q. What is neuroscience, sir?
- 12 A. Well, it's the study of the nervous system, primarily the
- 13 brain and in my view its relationship to behavior.
- 14 Q. And do you know Dr. Karron?
- 15 A. I do indeed.
- 16 Q. Do you see him in the courtroom?
- 17 A. I do.
- 18 Q. And how long do you know Dr. Karron?
- 19 A. Well, I have known him since at least 1975.
- 20 Q. And how did you come to know him?
- 21 A. He was an undergraduate who took some courses with me to
- 22 begin with, and very bright, and I adopted him into my
- 23 laboratory as a research assistant.
- 24 Q. Researching what, sir?
- 25 A. Well, we were looking at the relationship between some

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Coons - direct

1 appetite suppressants and their addictiveness. What we found
2 was that they certainly suppressed appetite but were not
3 addictive.

4 Q. And did you continue your relationship with Dr. Karron?

5 A. Well, I've known him ever since. And of course he went on
6 and got his own degree, eventually a Ph.D. in applied science
7 at NYU. Beyond that, I know him casually, quite frequently, I
8 would say several times a year.

9 Q. And did you have any involvement with Dr. Karron in his
10 quest for a Ph.D.?

11 A. Well, I was on his readers committee.

12 Q. What is a readers committee?

13 A. Well, when you do a Ph.D. you have a committee, we call an
14 advisors committee, which gives you advice all during the
15 course of your research. When you finally have concluded it
16 and written it up and are standing for orals, they call in a
17 few other people that have not been directly involved in that
18 research, to read the thesis and to help examine the candidate
19 in an oral examination over the thesis. And so I was one of
20 those people.

21 Q. And are you familiar with any of the projects that Dr.
22 Karron has worked on?

23 A. Well, sort of, kind of between vaguely and yes.

24 Q. And do you know him on a social level?

25 A. We're friends. Yes, I would say so.

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Coons - direct

1 Q. And do you have an opinion as to his honesty and
2 truthfulness?

3 A. I absolutely consider him to be a very fair and honest man.

4 Q. Have you ever had occasion to have financial dealings with
5 Dr. Karron?

6 A. Yes. I would say back in the mid-'90s he had some problem
7 meeting payroll deadline and --

8 MR. EVERDELL: Objection.

9 THE COURT: Objection sustained. It doesn't require
10 an explanation, the question. It went beyond the question.

11 A. I loaned him \$10,000.

12 Q. And was that ever repaid?

13 A. Yes.

14 Q. Was there any question in your mind that it would be
15 repaid?

16 A. No problem.

17 MR. RUBINSTEIN: No further questions.

18 THE COURT: Cross-examination.

19 CROSS EXAMINATION

20 BY MR. EVERDELL:

21 Q. Good morning, Dr. Coons.

22 A. Hello.

23 Q. You testified that you first got to know the defendant I
24 believe when he was a student of yours.

25 A. That's correct.

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Coons - cross

1 Q. And that he was in your research laboratory?

2 A. That's correct.

3 Q. About how long ago was that contact with the defendant?

4 A. Well, that would be about 1970, I would say about 1977,
5 '78, '79, in that period.

6 Q. So, 30 years ago.

7 A. 30 years ago, yes.

8 Q. And since then you have had casual contact with the
9 defendant?

10 A. Casual except in the sense that we just said, that I had to
11 read his thesis.

12 Q. Right. So casual meaning a couple times a year?

13 A. More than that probably.

14 Q. Well, Dr. Coons, are you familiar with something called the
15 Advanced Technology grant or ATP grant?

16 A. I don't think I am. I don't know it by that name if I do.

17 Q. Well, you are not familiar, are you, with the rules that
18 govern the ATP grant, are you?

19 A. No.

20 Q. And you never worked at the defendant's company CASI, did
21 you?

22 A. No.

23 Q. And you never handled the finances for CASI, right?

24 A. No.

25 Q. So, you don't have any knowledge of what happened at CASI

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86a7kar1 Coons - cross

1 between 2000 and 2003, do you?

2 A. I have no knowledge.

3 Q. Dr. Coons, you also said that the defendant is a friend of
4 yours, right?

5 A. Yes, I would say so.

6 Q. And you wouldn't want anything bad to happen to your
7 friend, right?

8 A. I would not want to have anything bad happen to my friend.

9 MR. EVERDELL: All right. No further questions, your
10 Honor.

11 MR. RUBINSTEIN: No questions, your Honor.

12 THE COURT: All right. Mr. Coons, you may step down.
13 (Witness excused)

14 THE COURT: Next witness.

15 MR. RUBINSTEIN: He will be right in, your Honor.

16 THEODORE W. LESLIE,
17 called as a witness by the defendant,

18 having been duly sworn, testified as follows:

19 DEPUTY COURT CLERK: Please state your name and spell
20 your last name slowly for the record, please.

21 THE WITNESS: Theodore W. Leslie, L-E-S-L-I-E.

22 DIRECT EXAMINATION

23 BY MR. RUBINSTEIN:

24 Q. Good morning, Mr. Leslie.

25 A. Good morning, sir.

1 Q. What is your business or occupation?

2 A. I am retired.

3 Q. And how long have you been retired?

4 A. Since 1990.

5 Q. And what did you do before you retired?

6 A. I programmed.

7 Q. What's your educational background, sir?

8 A. I have two degrees, one in musicology and the other in
9 mathematics.

10 Q. And when you graduated from college what did you do?

11 A. It's actually somewhat complicated. When I finished, I
12 went into the Army for two years. Then I went back and
13 completed. I had to play a senior recital. I did that, and I
14 got the degree. Then I studied graduate work and musicology
15 for a while.

16 Then I worked for the Social Security Administration
17 for a while, and the IRS for a while. Then I returned to
18 school, got the degree in mathematics. Then on the spur of the
19 moment I went to work for IBM where I remained for 24 years and
20 seven months.

21 Q. And at IBM in what capacity did you work?

22 A. Mostly programming, some managing.

23 Q. Did you have a background in programming when you went to
24 work for IBM?

25 A. No. At that time IBM taught programming.

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1 Q. To their employees?

2 A. Yes, to people who came on as would-be programmers.

3 THE COURT: What years are we talking about?

4 THE WITNESS: '65.

5 Q. From 1965 to 1990?

6 A. That's right.

7 Q. And you retired in 1990?

8 A. That's correct.

9 Q. And have you had any gainful employment since 1990?

10 A. I have occupied myself with the study of molecular and cell
11 biology.

12 Q. Now at IBM as an employee do you have a pension plan?

13 A. Yes.

14 Q. Do you have stock in IBM?

15 A. Yes.

16 Q. As an employee?

17 A. Yes. I haven't started to starve yet.

18 Q. How many more centuries could you survive on your pension
19 from IBM?

20 A. One never knows.

21 Q. Now, did there come a time that you met Dr. Karron?

22 A. Yeah.

23 Q. How -- did you see him in court?

24 A. Yes, of course.

25 Q. Indicating the defendant, your Honor.

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1 THE COURT: Yes. The witness has identified the
2 defendant.

3 MR. RUBINSTEIN: Thank you.

4 Q. And how did you come to meet Dr. Karron?

5 A. I audit courses, and so --

6 Q. Explain to the jury what auditing courses means.

7 A. You take a course, and you do everything that's required,
8 and you don't get credit for it. And you can do this if you
9 are retired. So, there was a course that appeared to be
10 interesting to me. And it was probably -- though I can't tell
11 you specifically -- it was probably computers and biology.

12 Q. And where was it?

13 A. At CCNY. And I sat in on the course.

14 Q. And who taught the course?

15 A. Dr. Karron.

16 Q. Approximately how many students were there?

17 A. Perhaps 30.

18 Q. And did you have occasion while you were in that course to
19 develop a relationship with Dr. Karron?

20 A. I think we must have talked a little bit, but after that I
21 think with some other members of the faculty we would have
22 coffee either before or after, and I got to know him somehow or
23 the other.

24 THE COURT: Can we have a date, Mr. Rubinstein?

25 Q. Approximately when would you say that you first met Dr.

SOUTHERN DISTRICT REPORTERS, P.C.

1 Karron?

2 A. 2002, maybe something like that. Not a long time but not
3 an insignificant time.

4 Q. Now, since that time that you met him in 2002 have you had
5 contact with him?

6 A. Yes. I would say we get together maybe once a month or so.

7 Q. And have you formed an opinion as to his honesty and
8 truthfulness?

9 A. I cannot imagine anybody more honest or more
10 straightforward.

11 THE COURT: Cross-examination.

12 MR. KWOK: Thank you, your Honor.

13 CROSS EXAMINATION

14 BY MR. KWOK:

15 Q. Good morning.

16 A. Good morning.

17 Q. You just mentioned a moment ago that you retired in 1990,
18 is that right?

19 A. Yes.

20 Q. So that means you haven't been working since that time.

21 A. You mean I haven't been earning money since that time.

22 Q. That's right.

23 A. That's correct.

24 Q. So you never worked in the defendant's company around the
25 time --

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86A7KAR1

Leslie - cross

1 A. No, no, no.

2 Q. -- 2000 to 2003?

3 A. No, I never worked for him at all.

4 Q. You know nothing about the defendant's company CASI?

5 A. No.

6 Q. And you have no knowledge about how CASI got its money,
7 right?

8 A. No.

9 Q. Similarly, you have no idea how CASI spent its money.

10 A. No.

11 Q. Are you familiar with a program called Advanced Technology
12 Program grant?

13 A. Yesterday by mistake I sat in, so there is some hazy
14 knowledge of this, but to say that I understand it, no.

15 Q. Aside from yesterday?

16 A. Oh, no, not at all.

17 MR. KWOK: No further questions.

18 MR. RUBINSTEIN: No questions, your Honor.

19 THE COURT: Nothing further?

20 MR. RUBINSTEIN: No. Could I step out and see if my
21 next witness is here?

22 THE COURT: The witness is excused.

23 (Witness excused)

24

25 MICHAEL R. TREAT,

SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1 Leslie - cross

1 called as a witness by the defendant,

2 having been duly sworn, testified as follows:

3 DEPUTY COURT CLERK: Please state your name for the
4 record and spell your last name slowly.

5 THE WITNESS: My name is Michael R. Treat, T-R-E-A-T.

6 DIRECT EXAMINATION

7 BY MR. RUBINSTEIN:

8 Q. Good morning, Dr. Treat.

9 A. Good morning.

10 Q. Now, what is your business or profession, sir?

11 A. I'm a general surgeon. I have been a general surgeon for
12 many years, although I'm not practicing surgery currently. I
13 also have a company that's producing a robotic surgical device.

14 Q. And how long have you had that company?

15 A. The company was founded in 2002, I think March of 2002.

16 Q. And have you -- well, withdrawn.

17 Do you teach?

18 A. Well, I taught on a regular basis when I was practicing
19 general surgery. I worked at Columbia University for that
20 time.

21 Q. And how long did you teach at Columbia University?

22 A. Well, I guess I got my 25 year pin just last week, so I
23 guess I have been there around 25 years as faculty basically.

24 THE COURT: College of Physicians and Surgeons?

25 THE WITNESS: Yes, sir.

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Treat - direct

1 THE COURT: Up at Columbia Presbyterian?

2 THE WITNESS: Yes. It used to be called Columbia
3 Presbyterian; now it's New York Presbyterian, but it's the
4 hospital affiliated with Columbia University.

5 Q. And the name of your company is Robotic Systems and
6 Technology, Inc.?

7 A. Yeah, the company is called Robotic Systems and
8 Technologies, but it used to be called robotic Surgical Tech.

9 Q. And what has it developed?

10 A. We're working on a robotic assistant for surgery, something
11 that hands the surgeon instruments and then counts the
12 instruments and keeps track of them so they don't get misplaced
13 or lost.

14 Q. And have you received any grants or contracts from the
15 federal government?

16 A. Yes, we have received several grants from different parts
17 of the federal government.

18 Q. Now, do you know Dr. Karron?

19 A. Yes, I do.

20 Q. Do you see him in court?

21 A. Yes, he is.

22 Q. Can you point him out, please, just for the record.

23 A. I really don't have my glasses on, but I think he is the
24 fellow sitting right over there. Yes.

25 THE COURT: The record will indicate that the witness

SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

Treat - direct

1 has identified the defendant.

2 THE WITNESS: Yes, I do see him over there.

3 Q. By the way, I see you are walking with a cane.

4 A. Yes, yes.

5 Q. Do you have a permanent disability?

6 A. Yes, I was injured in an accident, actually a motorcycle
7 accident, about three years ago. It was a pretty serious
8 accident.

9 Q. You were on the motorcycle?

10 A. Yes, I was.

11 Q. Now, how do you know Dr. Karron?

12 A. Well, I think I met him at a meeting, like one of those
13 scientific meetings. I think it might have been in California.
14 It was a meeting called Medicine Meets Virtual Reality. It's a
15 yearly thing. I think I ran into him there. This is quite a
16 few years ago, maybe 2003 or thereabouts, but I don't recall
17 where I first met him, but it would have been at one of those
18 meeting kinds of things.

19 Q. Did you ever have occasion to work on the same faculty as
20 he did?

21 A. No, we have never been on actually the same project or same
22 faculty or anything like that.

23 Q. And so what year would you say that you met Dr. Karron?

24 A. I'm estimating about 2003. It would have been early in our
25 getting out there with our work, so that's when I was speaking

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86A7KAR1 Treat - direct

1 and going to those meetings.

2 Q. And have you continued to have a relationship with Dr.
3 Karron since that time?

4 A. On and off, yeah. I mean I do see him at meetings and that
5 type of thing.

6 Q. And during that course of time were you able to form an
7 opinion as to his truthfulness and honesty?

8 A. Yes.

9 Q. And what is that opinion, sir?

10 A. I think he is a very honest person. I think he is a good
11 scientist. I mean that's as plain as I can put it. I think he
12 is a decent person. I think he is a good scientist too.

13 MR. RUBINSTEIN: Thank you very much, sir.

14 THE COURT: Any cross-examination?

15 MR. EVERDELL: Yes, your Honor.

16 CROSS EXAMINATION

17 BY MR. EVERDELL:

18 Q. Good morning, Dr. Treat.

19 A. Good morning.

20 Q. You testified that you have received grants before from
21 different parts of the federal government, is that right?

22 A. Yes.

23 Q. You never received an ATP grant, have you?

24 A. No, no, I never got one of those.

25 Q. So you're not familiar with the rules of the ATP grant?

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86A7KAR1

Treat - cross

1 A. I really -- well, I looked into it a few years ago, but I
2 really can't say I know the rules very seriously, so basically,
3 no, I don't know the rules.

4 Q. And you never worked for the defendant, did you?

5 A. Dan Karron, no, never worked for him.

6 Q. So, you are not familiar with the company CASI?

7 A. No, I've heard of it, but I never worked for it basically.

8 Q. So you never worked at CASI?

9 A. No.

10 Q. And you never handled the finances at CASI?

11 A. Oh, no, no.

12 Q. And you are not aware of what happened in CASI between the
13 years 2001 and 2003, right?

14 A. Not really, no. I don't know any of the details of what's
15 going on.

16 Q. In fact you said you didn't even meet Dr. Karron until
17 2003, isn't that right?

18 A. In that time frame, yes.

19 Q. You also said that you met him at a conference, right?

20 A. Yes.

21 Q. And you have never been on the same project or faculty with
22 Dr. Karron, isn't that right?

23 A. Well, no, no.

24 Q. And I think you said that you had an off-and-on
25 relationship, you would see him at meetings, is that right?

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Treat - cross

1 A. That's pretty much it, yes.

2 Q. So, you see him maybe a couple times a year?

3 A. Yes, I think that's about right.

4 Q. Maybe four or five times a year?

5 A. Yeah, I think that's about right. It's not like a regular
6 monthly meeting or anything like that, but, yeah.

7 Q. So you don't regularly meet with the defendant, right?

8 A. No.

9 Q. So your opinion of him is based on these four to five
10 meetings you had with him four or five days a year?

11 A. Yes, it's just my general impression of him.

12 MR. EVERDELL: Thank you. No further questions.

13 THE COURT: Any redirect?

14 MR. RUBINSTEIN: No, your Honor.

15 THE COURT: Thank you very much, doctor.

16 (Witness excused)

17 MR. RUBINSTEIN: Your Honor, may I approach the bench,
18 please?

19 THE COURT: Yes, sir.

20 (Continued on next page)

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86A7KAR1

1 (At the sidebar)

2 MR. RUBINSTEIN: Your Honor, I have two short
3 witnesses. One is purportedly parking the car, apparently came
4 with Dr. Karron from what I understand and is parking the car;
5 the other one is coming from Princeton, New Jersey. I would
6 ask your Honor to give me a ten-minute recess. If we don't
7 have them in ten minutes, I will make my determination about
8 calling Dr. Karron.

9 MR. EVERDELL: Who are the witnesses?

10 THE COURT: Windy?

11 MR. RUBINSTEIN: Windy from Connecticut, and Lee
12 Goldberg who is a character witness.

13 THE COURT: OK. Shall I excuse the jury for ten
14 minutes?

15 MR. RUBINSTEIN: Yes, please, your Honor.

16 (Continued on next page)

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86A7KAR1

1 (In open court)

2 THE COURT: Ladies and gentlemen, I think the best
3 thing to do is take a ten-minute recess, and we will come back
4 in ten minutes. I believe there will be some witnesses at that
5 point.

6 (Jury not present)

7 THE COURT: Why don't you hand out the draft charge so
8 that the parties will have that.

9 MR. EVERDELL: Your Honor, may I raise one issue as
10 well, as long as the jury is out?

11 THE COURT: Of course.

12 MR. EVERDELL: It's my understanding from the defense
13 counsel that he was going to call possibly another character
14 witness. And I wanted to raise the issue -- which is why I
15 objected with the first character witness -- that it's my
16 understanding of the federal rules that character witnesses are
17 not allowed to raise specific instances of conduct. They are
18 allowed to testify to opinion and reputation, the defendant's
19 character, a pertinent trait of the defendant's character only,
20 and they are not allowed to raise specific instances of conduct
21 in their testimony. So I raise this ahead of time in case the
22 defendant is planning on doing this with the next character
23 witness. It's inappropriate under the federal rules, and we
24 will object.

25 THE COURT: Mr. Rubinstein?

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1 MR. RUBINSTEIN: I think the government is correct,
2 your Honor. I will be so advised.

3 THE COURT: All right. What do we do then with
4 respect to Dr. Coons' testimony? Is that waived?

5 MR. EVERDELL: I won't press that issue, your Honor.

6 THE COURT: All right.

7 MR. RUBINSTEIN: Thank you very much, your Honor.

8 (Recess)

9 MR. EVERDELL: Your Honor, now that Mr. Rubinstein is
10 back, I do want to take up a matter with the court.

11 So, the two witness I understand that he wants to call
12 are Lee Goldberg as a character witness and then Windy
13 Farnsworth as a fact witness. Is that correct?

14 MR. RUBINSTEIN: That is right. Windy Farnsworth.

15 MR. EVERDELL: Windy Farnsworth as a fact witness. As
16 to Windy Farnsworth, the government objects to that at this
17 point. This is the first notice we ever had that they were
18 going to call her as a fact witness.

19 You have materials for her that we would like to be
20 able to prepare for her cross on, so this is very late notice
21 for the government to be able to prepare for cross for her,
22 given this is the very first time we have even been aware of
23 the defendant's intent to call her as a witness. So, we object
24 to her being called as a witness. If anything, we request some
25 time to be able to prepare for her cross-examination.

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1 MR. RUBINSTEIN: Well, A, they know about her, so
2 obviously they have material about her. B, her name has been
3 mentioned --

4 THE COURT: I forgot what her role is.

5 MR. RUBINSTEIN: Her role is that she is the lady from
6 Connecticut that Dr. Karron was going to move in with. They
7 introduced e-mails that reference her, and so she is a person
8 that they brought into this trial, and she is very relevant
9 because she gave Dr. Karron the infamous shoe rack that they
10 claim he bought with government funds. And this only came to
11 my attention during the course of the trial because it's such
12 a -- to me it's such a de minimis matter.

13 THE COURT: She is going to testify about the shoe
14 rack?

15 MR. RUBINSTEIN: About the shoe rack and Connecticut.

16 MR. EVERDELL: There are materials that we have that
17 we want to look through in order to properly cross-examine her,
18 and this is the first notice we have had that the defense
19 counsel was planning on calling her.

20 THE COURT: Well, is she here?

21 MR. RUBINSTEIN: I understand that she is going
22 through security, or she was going through security.

23 THE COURT: I can't see that the testimony is
24 particularly important.

25 MR. EVERDELL: Well, your Honor, the thing about

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1 Connecticut, if you recall the e-mail, was that this was at the
2 end of the day yesterday, there was testimony that the
3 defendant wrote to someone else and said he was going to move
4 to Connecticut and move to Windy's house and say that he still
5 had a cot in the 33rd Street apartment, and they were hoping
6 the ATP people would buy that. That was the substance of the
7 e-mail, so it does go to a point in our case that we want to
8 make about rent payments and things like that and the
9 defendant's knowledge of that.

10 THE COURT: December 2002.

11 MR. EVERDELL: That's right, that's when the e-mail
12 was.

13 THE COURT: Well, I guess you have a person who wants
14 to see you, Mr. Rubinstein, one of the character witnesses.

15 MR. RUBINSTEIN: I'm told they have arrived.

16 THE COURT: That was a year and a half into the grant.

17 MR. EVERDELL: That's true, that's certainly a point
18 we would make as well. But we know there are materials that we
19 have that might be relevant for cross-examination, and we would
20 like the chance to at least review them, get some time to
21 review them so we are adequately prepared.

22 THE COURT: Well, maybe I can give you a short recess
23 but nothing long.

24 MR. EVERDELL: Thank you, your Honor.

25 MR. RUBINSTEIN: Could I go speak to the witness, your

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86A7KAR1

1 Honor?

2 THE COURT: Yes. Let's get the witnesses in. Have
3 you got a witness here?

4 MR. RUBINSTEIN: I understand, but it's a witness I
5 never talked to, Judge. I just need about three minutes.

6 THE COURT: Well, all right. We've got to bring the
7 jury back in. We can't keep them waiting.

8 MR. RUBINSTEIN: Right.

9 (Recess)

10 MR. RUBINSTEIN: We have both our witnesses, Judge.

11 THE COURT: All right. Do you have the witness here?

12 MR. RUBINSTEIN: Yes, your Honor.

13 THE COURT: All right. Mr. Rubinstein, do you have
14 your witness?

15 MR. RUBINSTEIN: Yes, your Honor.

16 THE COURT: All right. I'm calling in the jury.

17 (Continued on next page)

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86A7KAR1

1 (Jury present)

2 THE COURT: All right. Please be seated.

3 Mr. Rubinstein?

4 MR. RUBINSTEIN: We're ready to proceed, your Honor.

5 Thank you. We call our next witness.

6 LEE H. GOLDBERG,

7 called as a witness by the defendant,

8 having been duly sworn, testified as follows:

9 DEPUTY COURT CLERK: Please state your name for the
10 record and spell your last name slowly.

11 THE WITNESS: Lee H. Goldberg.

12 DIRECT EXAMINATION

13 BY MR. RUBINSTEIN:

14 Q. Good morning, Mr. Goldberg.

15 A. Good morning.

16 THE COURT: G-O-L-D-B-E-R-G?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right.

19 Q. Where do you reside, sir?

20 A. I live in Princeton, New Jersey. Do you need an address?
21 2002 Mayfair Avenue.

22 Q. How long have you resided there?

23 A. A little over ten years.

24 Q. Is that where you came from this morning?

25 A. Yes, sir, and that's why I'm late. I apologize to the

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86A7KAR1

Goldberg - direct

1 court. The trains, I don't want to talk about it.

2 Q. Now, what is your business or occupation, sir?

3 A. I'm a recovering engineer. I used to be an aerospace
4 engineer. Now I'm a journalist.

5 Q. How long have you been a journalist?

6 A. About 14 years.

7 Q. Is there a particular area that you --

8 A. I cover high technology. Technology and the environment
9 are my two specialties, mostly networking communications.

10 Q. Do you know the defendant Daniel Karron?

11 A. Yes.

12 Q. Do you see the defendant in court?

13 A. Yeah. Right there.

14 THE COURT: The witness has identified the defendant.

15 Q. And how long do you know the defendant?

16 A. I'm trying to think of how many years. I guess since I was
17 13 or 14. We went to junior high together.

18 Q. And have you maintained a relationship with the defendant?

19 A. We were in close contact for a long time. Then I fell off
20 the face of the planet. I was doing some research. We weren't
21 in touch for a couple of years. Danny tracked me down probably
22 in 1979 and 1980, and we have been in contact ever since.

23 Q. And do you know a company called CASI?

24 A. Yes, sir.

25 Q. And have you had any involvement with CASI?

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86A7KAR1 Goldberg - direct

1 A. I was nominally at least on the board of directors, and I
2 did some initial funding.

3 Q. Did you ever go to a board meeting?

4 A. No, sir.

5 Q. Over the time that you have known Dr. Karron, have you been
6 able to form an opinion as to his truthfulness and honesty?

7 A. Yes, sir.

8 Q. What is your opinion, sir?

9 A. He is one of the people I trust in this world.

10 MR. RUBINSTEIN: Thank you very much.

11 THE COURT: Cross-examination.

12 MR. EVERDELL: Yes, your Honor.

13 CROSS EXAMINATION

14 BY MR. EVERDELL:

15 Q. Good morning, Mr. Goldberg.

16 A. Good morning.

17 Q. You said that you were on the board of directors nominally
18 for CASI?

19 A. Yeah.

20 Q. So you didn't attend any board meetings.

21 A. No.

22 Q. And you never were a part of the day-to-day workings of
23 CASI, were you?

24 A. No. I reviewed some documents, you know, when he was
25 making proposals, I would go over those things. I spent some

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86A7KAR1

Goldberg - cross

1 time giving advice for whatever it was worth, you know, but a
2 lot of times when it was a technical paper I would take a look
3 at it to make sure that it was at least in some sort of order
4 or in English, comprehensible.

5 Q. So on the technical side of things, reviewing documents, is
6 that what you said?

7 A. Basically it.

8 Q. So you didn't have any involvement with the finances of
9 CASI?

10 A. No, sir.

11 Q. You have no idea how they spent their money?

12 A. Not particularly.

13 Q. And you don't know anything about the rules of the ATP
14 grants in particular, do you?

15 A. Not -- I'm certainly not well versed in it.

16 Q. And you didn't actually work in the CASI work space in 2001
17 to 2003, did you?

18 A. I spent time there, but mostly, you know, mostly as a
19 friend and whatever, but I wasn't -- I was in the work space a
20 fair amount. I was in there for various reasons that I would
21 be there.

22 Q. Now, Mr. Goldberg, you own stock in CASI, don't you?

23 A. I believe that there is a piece of paper in my files that
24 says something to that effect.

25 Q. You own stock?

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86A7KAR1 Goldberg - cross

1 A. I guess so. I haven't looked at it in I don't know how
2 many years. It was given to me. I never asked.

3 Q. Right. You said also that you have known the defendant
4 since you were 13 or 14, right?

5 A. Yes, sir.

6 Q. So, he is a junior high buddy of yours, right?

7 A. Yeah. And?

8 Q. And you wouldn't want anything bad to happen to your
9 friend, right?

10 A. No. And your point is?

11 Q. Simply that. No further questions.

12 THE COURT: Any redirect?

13 MR. RUBINSTEIN: No, your Honor.

14 THE COURT: All right. You are excused. Next
15 witness.

16 (Witness excused)

17 (Continued on next page)

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1 THE COURT: Next witness.

2 Do you need time or are you all right?

3 MR. EVERDELL: If this is the next witness, your
4 Honor, we would request some time.

5 THE COURT: Well, let's see if the witness is here.

6 MR. EVERDELL: Yes, your Honor.

7 THE COURT: You want to see if he's here, then I'll
8 make a decision on the other. Would you just run out and see
9 if he's here.

10 (Pause)

11 MR. RUBINSTEIN: Judge, while the next witness is
12 walking in, may I approach with the government?

13 (At the sidebar)

14 MR. RUBINSTEIN: While the next witness is walking in
15 the courtroom, I wanted to --

16 THE COURT: All right, sir. Let's hold it.

17 MR. RUBINSTEIN: That's the next witness.

18 MR. EVERDELL: Your Honor --

19 THE COURT: She's been here all --

20 MR. RUBINSTEIN: That's why I asked to approach the
21 bench, your Honor. I gave the Government all the Master
22 Card -- she's a bookkeeper. She has been here assisting me.

23 THE COURT: She's a bookkeeper?

24 MR. RUBINSTEIN: She's a bookkeeper. She's a
25 bookkeeper.

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1 THE COURT: I thought it was Windy Farnsworth you
2 said.

3 MR. RUBINSTEIN: That's a different witness, your
4 Honor. The government --

5 THE COURT: No notice of this.

6 MR. RUBINSTEIN: Because they were supposed to
7 stipulate to the Master Card and they won't stipulate. She
8 did -- I gave them my own book for the weekend to check over
9 and they won't stipulate to the Master Card. I'm forced to
10 call a witness. I mean, I stipulated to the American Express.
11 I gave them my own copy that they didn't even return till
12 Monday, Judge --

13 THE COURT: I'll have to --

14 MR. RUBINSTEIN: -- of the Master Card and --

15 THE COURT: I'll have to excuse the jury 10 minutes or
16 so. How long do you need for the preparation?

17 (Jury exits the courtroom)

18 MR. KWOK: This witness --

19 THE COURT: What? I'm not going to allow this
20 witness.

21 MR. RUBINSTEIN: Judge, they --

22 THE COURT: What is the problem?

23 MR. RUBINSTEIN: He told me he would stipulate.

24 MR. KWOK: I didn't tell you anything.

25 MR. RUBINSTEIN: They indicated --Judge, we have had a

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1 very professional relationship during this case between the
2 prosecution and the defense. When they've asked me for
3 stipulations, I've given them stipulations, I had talked to
4 them about the Master Card. Part of our defense is that he
5 spent money on Master Card.

6 The only thing this witness is saying, and their
7 witnesses had my -- her books, her books for the entire
8 weekend. I gave them my original copies. I didn't even have a
9 copy for myself. They took it back to Atlanta. They've been
10 working with it. They came back late Sunday night with this
11 stuff. For them to say that they don't have time is --

12 THE COURT: Who is the witness?

13 MR. RUBINSTEIN: -- just wrong.

14 THE COURT: So just I know, who is the -- what's the
15 name of the witness?

16 MR. RUBINSTEIN: Deborah Dunlevy. And the only thing
17 I want to do is put the Master -- I didn't expect to have a
18 problem, Judge, because these are records that --

19 THE COURT: Defendant can put in the Master Card.

20 MR. RUBINSTEIN: That's if I decide to call him. I
21 don't want to --

22 THE COURT: Are you going to call him?

23 MR. RUBINSTEIN: I don't know yet. I want to see how
24 Ms. Farnsworth does.

25 The bottom line is that they are, they are, what do

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1 you ask call it, they won't stipulate. She went over these
2 records. The government has never looked at these records
3 before I made an issue about it with Riley, and I think that
4 it's goes to the heart of the defense. Here he spent almost
5 \$50,000 on his Master Card for grant items, and I think that
6 the defense should have the opportunity to put that into
7 evidence.

8 MR. KWOK: No, your Honor. This is --

9 MR. RUBINSTEIN: Just like they put in the American
10 Express with my stipulations.

11 MR. KWOK: This is completely unfair. I did not get
12 the stipulation until this morning. And in reviewing those
13 records, they are not records from Master Card directly. They
14 are just a bunch of numbers created from a ledger. I have no
15 assurance where those numbers came from. To say that -- in
16 fact, I tried to have Mr. Rubinstein stipulate to a similar
17 ledger, and he told me he had no assurance that those numbers
18 reflected in the ledger I wanted him to stipulate to.

19 THE COURT: We don't have the Master Card bills?

20 MR. RUBINSTEIN: Yes, we do. We gave it to them.

21 THE COURT: Master Card bills themselves?

22 MR. RUBINSTEIN: The --

23 THE COURT: I understood from --

24 MR. RUBINSTEIN: The statements.

25 THE COURT: Just a second. I understood from the

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1 testimony to date, that all the original transcripts of all
2 were destroyed and instead they relied on scanned documents.

3 MR. RUBINSTEIN: That's correct, Judge, scanned -- the
4 scanned Master Card bills. The monthly statements are -- you
5 know, in the modern era of paperless world, this is what people
6 do.

7 THE COURT: I just wanted to --

8 MR. RUBINSTEIN: These are the Master Card --

9 THE COURT: So these are scanned, they're not Master
10 Card -- but they're the records of the -- business copies of
11 Master Card invoices.

12 MR. RUBINSTEIN: Right.

13 THE COURT: That have been scanned in, is that it?

14 MR. RUBINSTEIN: That's correct, your Honor.

15 THE COURT: All right.

16 MR. RUBINSTEIN: I've given them to the government.

17 THE COURT: They're not the originals. Go ahead.

18 MR. KWOK: And when Mr. Rubinstein gave me that --

19 MR. RUBINSTEIN: Excuse me, just the American Express.

20 THE COURT: I want to hear him.

21 MR. KWOK: When Mr. Rubinstein gave me that thick
22 folder over the weekend, that was in response to our if as when
23 subpoena, if your Honor recalls, in the event that the
24 defendant testifies, so we can cross him on those records.

25 At that point no mention was made about this new

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1 witness, whose name I just heard a few minutes ago. We've
2 never known that this witness existed. She has been in the
3 courtroom the whole time hearing all the testimony, and we have
4 not heard a word that she would be testifying.

5 MR. RUBINSTEIN: Judge, I know --

6 THE COURT: She works for the business?

7 MR. RUBINSTEIN: She never worked for CASI. She was
8 brought aboard afterwards to help compile records.

9 THE COURT: When was she brought aboard?

10 MR. RUBINSTEIN: Probably in 2004, late 2003, maybe
11 2005. I mean, she's been --

12 THE COURT: When, approximately? Let's find out.

13 MR. RUBINSTEIN: I have no --

14 THE COURT: She wasn't an employee during the time
15 involved?

16 MR. RUBINSTEIN: No, not at all.

17 MR. KWOK: And if --

18 THE COURT: How can she testify that these were
19 records kept in the regular course of business?

20 MR. EVERDELL: During the time of the indictment.

21 MR. KWOK: And these are personal Master Card records,
22 not even CASI corporate records.

23 MR. RUBINSTEIN: Exactly exactly.

24

25 MR. KWOK: So I don't see the relevance.

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1 MR. RUBINSTEIN: How could the government --

2 THE COURT: I see. I'm sorry.

3 MR. RUBINSTEIN: I'm going to ask for the continuance
4 to get Master Card here. You know, for the government to have
5 the records -- and they had the Master Card records before, and
6 I mentioned the Master Card a long time ago. They have all of
7 this. For them to try to keep out of evidence legitimate
8 evidence that would show the defendant is innocent is, frankly,
9 Judge, not professional.

10 THE COURT: Well --

11 MR. RUBINSTEIN: Okay, it's not professional. I
12 expect more than from the representatives.

13 THE COURT: I hear that. I'm not going to get into
14 that. But I've got to determine whether they're admissible,
15 and also whether the Government's had a fair opportunity. What
16 is -- where are the records? Let me see a copy of these
17 things --

18 MR. RUBINSTEIN: Okay, sure.

19 THE COURT: -- that you're talking about.

20 Have you examined these record? I'm sorry, I better
21 wait till he comes back.

22 THE DEPUTY CLERK: Do you want me to put the witness
23 in the room so everybody can go back to the tables? Because
24 the jury is not here.

25 THE COURT: I've got to see these records.

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1 THE DEPUTY CLERK: I understand.

2 MR. EVERDELL: We'll just wait here.

3 MR. RUBINSTEIN: Also, Judge, she ordered them also,
4 from what I understand, ordered them from the bank and got
5 copies and compared them to the original of the Master Card
6 statements.

7 THE COURT: Let me get my glasses. Which of the
8 entries, Mr. Rubinstein --

9 MR. RUBINSTEIN: Pardon? Yes, your Honor.

10 THE COURT: Come here. Which of the entries do you
11 claim are CASI expenses?

12 MR. RUBINSTEIN: Which are the entries, your Honor?

13 THE COURT: Yes.

14 MR. RUBINSTEIN: There are medical --

15 THE COURT: Which ones? Let me just see.

16 MR. RUBINSTEIN: I'll give you the chart that we have,
17 Judge.

18 THE COURT: What -- here. Give me this. I just want
19 to know -- check off the items you think are business expenses.

20 MR. RUBINSTEIN: Okay. Let me get our chart.

21 THE COURT: I don't want her --

22 MR. RUBINSTEIN: No, no, not her. I want to get it
23 from her so I could --

24 THE COURT: Well, then give me these records. I'll go
25 through them first.

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1 MR. RUBINSTEIN: Okay. Where is the chart?

2 Your Honor, this is an analysis -- these are the
3 expenses that we did not attribute to the grant.

4 THE COURT: What?

5 MR. RUBINSTEIN: These are over here, your Honor.

6 THE COURT: That's the ones you say he can charge to
7 the grant.

8 MR. RUBINSTEIN: I'm going to show you the ones that
9 we're not charging to the grant, your Honor. We have it in the
10 negative fashion.

11 THE COURT: All you're going to do is show that these
12 charges were not charged to the grant.

13 MR. RUBINSTEIN: And then the other ones were
14 charged -- are charged to the grant are grant expenses; in
15 other words, here is the schedule, your Honor, the defendant's
16 ZZZ-1, and those are the ones that in our analysis we did not
17 charge to the grant. Over here, Judge.

18 THE COURT: You're saying that all these Master Card
19 charges were not charged to the grant.

20 MR. RUBINSTEIN: No. I'm saying they're part of it.
21 This is the summary chart of what was -- we say was charged to
22 the card that were ATP expenses, attributable either medical --

23 THE COURT: Total attributable to -- I mean, where
24 does the -- to business expenses?

25 MR. RUBINSTEIN: Right.

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1 THE COURT: The Statue of Liberty gift?

2 MR. RUBINSTEIN: Pardon?

3 THE COURT: Statue of Liberty gift, Gristedes?

4 MR. RUBINSTEIN: No, we're not. That's --

5 THE COURT: What are these?

6 MR. RUBINSTEIN: Judge, where's Statue of Liberty
7 gift? I don't see anything -- those are excluded. The total
8 amount is --

9 THE COURT: I don't follow you.

10 MR. RUBINSTEIN: The total amount of the card is
11 \$90,000, your Honor, that he spent.

12 THE COURT: I got these in front of me.

13 MR. RUBINSTEIN: Yes. It totals to \$90,000. We are
14 attributing \$49,000 to grant related expenses, and the other
15 41,000 -- \$40,000 are non-grant, and that goes with the
16 Gristedes and the bike shop and cash advance, and clothing, and
17 things of that nature.

18 THE COURT: Look, when was her exact period of
19 employment? Is she being called as an expert, in other words?
20 You're doing reconstruction of the books.

21 MR. RUBINSTEIN: Expert --

22 MR. KWOK: That's exactly what he's doing without
23 notice.

24 THE COURT: What?

25 MR. RUBINSTEIN: Expert bookkeeper -- you wouldn't

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1 stipulate. I had no intention of calling -- she's petrified of
2 taking the witness stand.

3 MR. KWOK: I got the stipulation this morning.

4 MR. RUBINSTEIN: You got the records. I gave you her
5 original records on Friday. I gave you everything I had on
6 her.

7 MR. KWOK: You said nothing about expert witness on
8 Friday.

9 MR. RUBINSTEIN: We talked about a stipulation, we
10 talked about -- you said you'll consider a stipulation. I gave
11 you all the records on Friday to look over.

12 MR. KWOK: You didn't --

13 MR. RUBINSTEIN: It's amazing, and they knew about the
14 master file before.

15 MR. KWOK: I don't know about it. I don't know what
16 you're talking about, Mr. Rubinstein. Those records were
17 produced in response to the government's if as when subpoena in
18 the event the defendant testifies.

19 THE COURT: I'm not going to allow her testimony as an
20 expert, late notice. So she can not testify that they
21 should've charged to the business things that, based on the
22 Master Card that they didn't -- she wasn't employed at the
23 time, and she had nothing to do with the break down, as I
24 understand it. She's -- therefore, she's an expert witness
25 doing things in hindsight.

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1 MR. EVERDELL: Plus she's been in the courtroom the
2 entire time, she's been an integral part of defense team, she's
3 been at counsel table, she's been reviewing records. She's
4 been at counsel table, she's been reviewing records with
5 defense counsel, she's been talking to witnesses. This is
6 completely inappropriate to call her in any capacity, much less
7 in an expert capacity.

8 MR. RUBINSTEIN: Judge, she's merely authenticating
9 documents that they know are legitimate documents. She's
10 authenticating them to get them into evidence.

11 I would -- if the government wants to stipulate that,
12 we'll agree to stipulate to put these records, all the Master
13 Card records into evidence, I won't call her. I won't ask to
14 call her, I'll withdraw the application. But I think that it's
15 appropriate that the Master Card records go into evidence.

16 MR. KWOK: Are these the records we're talking about,
17 Mr. Rubinstein?

18 MR. RUBINSTEIN: I believe they are.

19 MR. KWOK: This stack? Can I review them?

20 MR. RUBINSTEIN: Yeah, let me --

21 THE COURT: Let him review them.

22 MR. RUBINSTEIN: I just grabbed them, and I assume
23 that this is what -- yes. There must be additional ones
24 because it looks like there's only November, January '03. We
25 must be missing a couple. Let me see if there's --

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1 THE COURT: What's this?

2 I want to make a record of this exhibit. ZZZ is a
3 summary Master Card breakdown from October 1, 2001 till
4 December 31st, 2003 purporting to show total spent, a Master
5 Card 90,114.49 and attributable to CASI business expenses
6 \$49,944.59. It's a proposed exhibit. It seems to me that
7 clearly shows that it's an expert testimony conclusion.

8 MR. RUBINSTEIN: Judge, we're going to print them out.
9 We have them in the computer.

10 THE COURT: Let's get back here and get this thing
11 determined, Mr. Rubinstein.

12 MR. RUBINSTEIN: We're printing out of the computer
13 the statements that were -- these statements.

14 THE COURT: The ones you handed me were incomplete.

15 MR. RUBINSTEIN: Yes, they're just '02 statements.
16 We're missing --

17 THE COURT: Those are the ones that the witness handed
18 you.

19 MR. RUBINSTEIN: No. I took her book when she wasn't
20 here, Judge, and I brought -- I took --

21 THE COURT: And she doesn't have them; they're coming
22 out of the computer now?

23 MR. RUBINSTEIN: Yes. She had them. She's -- it's
24 not relevant what --

25 THE COURT: Now, what are we going to do?

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1 MR. RUBINSTEIN: So we're printing out the rest of the
2 statements during the grant period, and we'll -- and ask the
3 government to stipulate that these are his Master Card
4 statements.

5 MR. KWOK: His personal.

6 MR. RUBINSTEIN: Personal Master Card statements.

7 MR. KWOK: Government has no problem with that, just
8 that these are his Master Card records for his personal Master
9 Card, and they are what they purport to be.

10 MR. EVERDELL: But let's be specific. We're not
11 stipulating to any analysis of them.

12 MR. KWOK: Just these records.

13 MR. RUBINSTEIN: Just the record, just the records.

14 THE COURT: All right, can we go ahead?

15 MR. RUBINSTEIN: Yes.

16 MR. EVERDELL: We need to look at the full set of
17 records.

18 THE COURT: You'll call Ms. Farnsworth first?

19 MR. RUBINSTEIN: I'll call Ms. Farnsworth first.

20 MR. KWOK: Do we have time to prepare for Ms.
21 Farnsworth?

22 MR. EVERDELL: We haven't been able --

23 MR. KWOK: Just dealing with all these new surprises.

24 MR. EVERDELL: If we can have 15, 20 minutes just to
25 look --

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1 THE COURT: All right, run down get that. Let's go.

2 MR. EVERDELL: Thank you, your Honor.

3 THE COURT: Come back as soon as you can.

4 (Recess)

5 (In open court; jury not present)

6 THE COURT: All right, are we ready, ladies and
7 gentlemen?

8 MR. RUBINSTEIN: Yes. I will call the next witness.
9 I have my associate photocopying all the statements so that
10 everybody has a set, but I'll call Miss Farnsworth now.

11 THE COURT: What?

12 MR. RUBINSTEIN: I'll call Miss Farnsworth now and
13 we'll have the records for them in total.

14 THE COURT: Have you made a decision yet or has your
15 client made a decision yet about the other aspect?

16 MR. RUBINSTEIN: Yes, we made a decision. We'll rest
17 after we submit the Master Card bills.

18 THE COURT: I think the government consented to that.

19 MR. RUBINSTEIN: Yes.

20 MR. KWOK: Yes.

21 THE COURT: As personal -- his personal Master Card.

22 MR. RUBINSTEIN: Right.

23 THE COURT: But I meant I wasn't referring to that
24 decision -- I was referring to the other decision, just because
25 I don't want to have to excuse the jury again if you made a

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1 decision about calling the defendant.

2 MR. RUBINSTEIN: No, that's what I said, Judge, that
3 we made that decision not to call the defendant.

4 THE COURT: Not to call.

5 MR. RUBINSTEIN: Not to call him.

6 THE COURT: Then I have to ask Dr. Karron a couple --
7 my practice, to ask Dr. Karron a couple of questions.

8 MR. RUBINSTEIN: Oh, surely.

9 THE COURT: Dr. Karron, you understand that you have a
10 right to testify in this case.

11 THE DEFENDANT: Yes, I do.

12 THE COURT: And after consultation with Mr.
13 Rubinstein, you've decided that you do not want to testify?

14 THE DEFENDANT: Mr. Rubinstein has --

15 THE COURT: I'm sorry?

16 MR. RUBINSTEIN: The Judge asked you a question.

17 THE DEFENDANT: Mr. Rubinstein has convinced me that
18 it would be in the best interest not to testify.

19 THE COURT: Well, that isn't what I'm asking you. I'm
20 asking you -- you have the final decision --

21 THE DEFENDANT: I've made the final decision.

22 THE COURT: -- about whether you testify or not. So I
23 want to know whether you've made that decision yourself or
24 whether your just going along with whatever Mr. Rubinstein
25 says.

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1 THE DEFENDANT: I've made the final decision.

2 THE COURT: You have?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Not to testify?

5 THE DEFENDANT: That is correct.

6 THE COURT: All right. I just wanted to -- and it's
7 your own determination?

8 THE DEFENDANT: In consult with my advisor.

9 THE COURT: I'm sorry.

10 THE DEFENDANT: I would -- yes. The answer is yes.
11 It's a well considered decision. I've talked about it at
12 length with all my advisors, all my friends, all my characters.

13 THE COURT: All right, that's all. I just wanted to
14 be sure it was your decision. Because sometimes we have
15 litigation that arises after a case, and some judges don't
16 follow the procedure that I follow. And I follow that
17 procedure because it seems to me that is the way it should be
18 asked. But that's my own. I won't say that it's appropriate
19 since some Judges don't do it.

20 MR. RUBINSTEIN: I think it is, and I've -- you're the
21 only Judge that ever did it, and I am appreciative that you do
22 it, Judge.

23 THE COURT: All right.

24 MR. RUBINSTEIN: It's very --

25 THE COURT: All right, let's get the jury. Let's have

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1 Miss Farnsworth, let's get the Master Card in. And then the
2 government has rebuttal?

3 MR. KWOK: I don't think we do.

4 THE COURT: Well, you'll be asked.

5 (Jury entering; jury present)

6 THE COURT: All right, please be seated.

7 Your next witness, Mr. Rubinstein.

8 MR. RUBINSTEIN: Yes, your Honor.

9 WINDY LYNNE FARNSWORTH,
10 called as a witness by the defendant,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RUBINSTEIN:

14 Q. Good morning, Ms. Farnsworth. Have we met?

15 A. Just before I came to court, outside.

16 Q. Now --

17 A. Outside.

18 Q. What is your business or occupation?

19 A. I am an engineer. I currently work for AS&L Lithography in
20 Wilton, Connecticut. I'm a senior engineer in that position,
21 and I've been there approximately two-and-a-half years, and
22 I've been an employee of engineering pretty much my entire
23 life, adult life.

24 Q. And where do you reside?

25 A. I currently reside in New Millford, Connecticut.

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Farnsworth - direct

1 Q. And do you know -- how long do you reside in New Millford,
2 Connecticut?

3 A. I purchased that home in December, 2000, and I've been
4 there ever since.

5 Q. And do you know the defendant, Daniel Karron?

6 A. Yes, I do.

7 Q. Dr. Karron? Do you see the defendant in court?

8 A. Yes.

9 Q. Could you point him out, please?

10 A. Right there.

11 MR. RUBINSTEIN: Indicating the defendant, your Honor.

12 THE COURT: The witness -- the record will indicate
13 the witness has identified the defendant.

14 Q. Now, when did you meet the defendant?

15 A. I met the defendant in, I think early Spring, 1999 when I
16 was out on the east coast for a job interview. I had gotten
17 his name from a mutual friend to meet when I came out here on
18 the east coast for that interview. And I don't think we
19 actually met at that time, but we spoke on the telephone.

20 Q. And where did you come from?

21 A. I came from the Salt Lake area, South Jordan, Utah.

22 Q. And did there come a time when you met the defendant?

23 A. Yeah. Yes, I did meet the defendant in, I believe it was
24 when I finally came out to live and reside in the New York area
25 in April, 1999.

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Farnsworth - direct

1 Q. And when you came to reside in the New York area, where did
2 you reside?

3 A. I got an apartment in Seldon on Long Island, and I was
4 there until I lost my job due to financial cutbacks in the
5 company I was working for, in fall of 1999.

6 Q. And where did you move when -- from Seldon after you lost
7 your job?

8 A. I moved into New York into the defendant's apartment as a
9 roommate.

10 Q. And how long did you stay there?

11 A. Approximately a year.

12 Q. Did you have a personal relationship with the defendant?

13 A. We were friends, and that was about as far as it went. We
14 were not intimate in any way.

15 Q. And so how long did you stay in the -- was this at the
16 apartment at 300 East 33rd Street, apartment 4N?

17 A. That's correct.

18 Q. And which portion of the apartment did you utilize?

19 A. I lived in the living room, which is -- essentially, would
20 be called the living room. I had a steel bunk bed. All of my
21 personal belongings that I didn't have in storage were there,
22 my clothing and my other personal effects, and that's pretty
23 much where I stayed. I had the bed above it for guests, and
24 then I had the bed on the bottom for myself.

25 Q. Now, did you pay the defendant any for living there?

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Farnsworth - direct

1 A. Yes. I paid rent while I was there each month. I also
2 contributed toward groceries and other sort of things that, you
3 know, transportation, that sort of thing.

4 Q. So how long did you stay there altogether?

5 A. I think -- my recollection is I was there from fall 1999
6 until about November of 2000 when I moved into my house in New
7 Millford.

8 Q. And have you remained in contact with the defendant since
9 that time?

10 A. Yes, I have.

11 Q. On a regular basis?

12 A. Yeah, off and on.

13 Q. And has the defendant visited you in New Millford,
14 Connecticut?

15 A. Off and on. Not terribly often, but yeah. I mean, as far
16 as friends are concerned, you know, on occasion.

17 Q. Has the defendant stayed over your house?

18 A. Yes, overnight occasionally.

19 Q. And how -- could you describe your house for us?

20 A. I have a two story home, approximately 1600 square feet.
21 There's three bedrooms and a basement, living room area, dining
22 room.

23 Q. And did you have, in 2001 or 2002, did you rent out any
24 portion of your home?

25 A. D. B. Karron had proposed to rent a room from me during the

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Farnsworth - direct

1 time of the grant, when it became difficult for his apartment
2 to be a residence. He never actually moved in on a permanent
3 basis, though, but did store equipment in my basement for a
4 period of time.

5 Q. Did you sign a lease?

6 A. I did sign a lease. We decided to not honor it because the
7 conditions changed with the grant.

8 Q. What was the length of the lease?

9 A. I believe it was for a year.

10 Q. Now, did Dr. Karron give you any monies?

11 A. Yes. D. B. Karron did pay me for a first month and a last
12 month for the -- so upfront money for the lease.

13 Q. Did Dr. Karron ever actually stay at your home?

14 A. Just briefly.

15 Q. Pursuant to the lease, did he ever really -- did he ever
16 actually move in?

17 A. He never actually moved in, in like that he brought a lot
18 of his personal effects, but he did come and stay on weekends,
19 for instance.

20 Q. All right. Did you have occasion to give Dr. Karron any,
21 any items that you owned?

22 A. Well, I give things to people, I'm quite generous. And I
23 do recall one of the things that I gave Dr. Karron was a shoe
24 rack.

25 Q. Let me show you what's in evidence as a government

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Farnsworth - direct

1 exhibit -- I show you what's in evidence as Government's

2 Exhibit 125.

3 A. Uh-huh.

4 Q. Do you recognize this item?

5 A. Yes, I do.

6 Q. And how do you recognize this item?

7 A. It was the rack that I gave D. B. Karron when I purchased
8 one that sat on the floor instead of one that hung on the door.

9 Q. Pardon?

10 A. I gave it to Dr. Karron when I replaced it with a different
11 type.

12 Q. And why did you replace it?

13 A. Because it was on the back of the door, and when I closed
14 the door the shoes would fall off all the time. And so I put
15 one that was on the floor that carried more shoes and didn't
16 fall off all the time.

17 Q. And where did you purchase this? Did you purchase this or
18 was it --

19 A. My recollection is I purchased it at K-mart in New
20 Millford, in the town that I live in.

21 Q. And do you recall when it was that you gave D. B. Karron
22 Government's exhibit 125?

23 A. Well, I -- h'mm. I would guess probably somewhere around
24 the maybe 2002, 2003 timeframe.

25 THE COURT: Did you give it to him in Connecticut?

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Farnsworth - direct

1 MR. RUBINSTEIN: No further questions, your Honor.

2 I'm sorry, Judge.

3 THE COURT: I'm sorry.

4 MR. RUBINSTEIN: You asked a question?

5 THE COURT: Did you give it to him in Connecticut?

6 THE WITNESS: I'm not certain I know the answer to
7 that question. I may have brought it with me to New York on a
8 visit. I don't -- really don't recall.

9 THE COURT: You don't recall?

10 THE WITNESS: No.

11 THE COURT: All right.

12 BY MR. RUBINSTEIN:

13 Q. After --

14 THE COURT: I do recall giving it to him, but I don't
15 recall where I gave it to him.

16 BY MR. RUBINSTEIN:

17 Q. When were you asked -- when were you asked about this?

18 A. The Judge asked me where I gave it to him, was it in
19 Connecticut that I gave it to him, and I wasn't certain I knew
20 where I gave it to him.

21 Q. When was it that you discussed the fact that you had given
22 Dr. Karron this rack, when was the -- when did you discuss this
23 before you came to court?

24 A. Well, I believe yesterday evening D. B. Karron told me
25 that --

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Farnsworth - direct

1 Q. Don't tell us what he told you. You're not allowed to tell
2 what he told you.

3 A. Well, he -- he told me that I was going to get a call from
4 you, and that I would be asked to testify about, among other
5 things, perhaps something I gave him. And so he says, do you
6 recall the shoe rack that you gave me? And I says, oh, yeah,
7 that shoe rack, yeah. Well, the government took it as
8 evidence. And I said oh, really? And so he says, will you --
9 are you willing to testify about that? And I said yes, I
10 would, you know.

11 MR. RUBINSTEIN: Thank you. No further questions.

12 THE COURT: All right.

13 CROSS EXAMINATION

14 BY MR. KWOK:

15 Q. Good morning.

16 A. Good morning.

17 Q. You mentioned a moment ago that the defendant never lived
18 in Connecticut, correct, with you?

19 THE COURT: I'm sorry, I didn't catch your question.

20 Q. A moment ago you testified that the defendant never lived
21 with you in Connecticut, is that correct?

22 A. That's correct.

23 Q. So from the period from 2000 to 2003, as far as you know,
24 the defendant was living in midtown Manhattan, isn't that true?

25 A. That's correct.

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Farnsworth - cross

1 Q. The same place that you lived at for --

2 A. The same residence that I lived at, yes.

3 Q. Did you visit him there at that location?

4 A. On occasion. On the weekends we, you know, would do things
5 like, for instance, we would, would ride our bikes around Lower
6 Manhattan, and get exercise, and do things that friends do.

7 Q. Did it appear to you while you were visiting that
8 apartment, that the defendant lived there?

9 A. After a fashion, it was a difficult place to live. It was
10 noisy, and more an office than an apartment.

11 Q. Right. Let me show you government Exhibit 101, page eight,
12 if we could pull that up on the screen could we zoom in -- zoom
13 into the highlighted item.

14 Now, a moment ago you testified about the shoe rack;
15 you remember that?

16 A. Uh-huh.

17 Q. Do you know what happened to this shoe rack?

18 A. Oh, I don't really know. A Navy nylon ten -- do you know
19 what that is?

20 Q. Well, let me zoom out. Can we zoom out? Can we zoom in on
21 the name, just on top of that list?

22 THE COURT: I'm sorry, what are you --

23 BY MR. KWOK:

24 Q. What does that say?

25 A. It says, D. B. Karron.

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86azkar2 Farnsworth - cross

1 MR. KWOK: No further questions.

2 THE COURT: Any redirect, Mr. Rubinstein?

3 MR. RUBINSTEIN: Would you put that exhibit back up,
4 please?

5 THE COURT: Yes.

6 MR. RUBINSTEIN: Would you move the yellow line down
7 to here? Over here, yeah. Right there.

8 REDIRECT EXAMINATION

9 Q. Do you see that name, Miss Farnsworth?

10 A. I see. It says something like Jonathan Mason.

11 Q. Did you know a -- did you ever come in contact with a
12 contractor who did some work at Dr. Karron's apartment?

13 A. Well, there were a number of contractors who did come in
14 and do work on occasion. I don't specifically recognize -- I
15 think there was somebody named John, yes.

16 THE COURT: Did he have a British accent?

17 THE WITNESS: Oh, yeah, I think so. Yeah.

18 MR. RUBINSTEIN: Okay. I have no further questions.

19 MR. KWOK: No further questions, your Honor.

20 THE COURT: All right. Thank you very much. Next
21 witness.

22 THE DEPUTY CLERK: Witness is excused?

23 THE COURT: Yes, you're excused.

24 THE WITNESS: Am I excused?

25 (Witness excused)

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86azkar2 Farnsworth - redirect

1 THE COURT: Next witness, Mr. Rubinstein.

2 MR. RUBINSTEIN: May I approach the government, your
3 Honor?

4 THE COURT: Yes. Do you have an exhibit?
5 (Pause while counsel confer)

6 MR. RUBINSTEIN: Your Honor, we will -- your Honor, at
7 this time there is a stipulation between the United States of
8 America by Assistant United States Attorney Steven Kwok and Dr.
9 Karron, that -- and this is, this stipulation will be marked as
10 defendant's ZZZ. Stipulation provides that the defendant's
11 ZZZ-1 are the personal Master Card accounts, statement for Dr.
12 D. B. Karron's personal Master Card account number 5263, 2710,
13 0928, 1872. Statements are from October 1st, 2001, through
14 June 30th, 2003.

15 THE COURT: Stipulated into evidence?

16 MR. RUBINSTEIN: I, or into evidence defendant's
17 ZZZ-1.

18 THE COURT: Stipulation is ZZZ, and the Master Card
19 records of, personal Master Card records of Dr. Karron are
20 marked ZZZ-1?

21 MR. RUBINSTEIN: Yes, your Honor.

22 THE COURT: They are admitted in evidence.

23 (Defendant's Exhibits ZZZ and ZZZ-1 received in
24 evidence)

25 THE COURT: Next witness.

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Farnsworth - redirect

1 MR. RUBINSTEIN: And with that, your Honor, the
2 defendant respectfully rests.

3 THE COURT: Government?

4 MR. KWOK: Government rests.

5 THE COURT: Well, jury, you've now heard all the
6 evidence and have the exhibits, but we have to prepare for the
7 summations of counsel. And it is my practice to give them a
8 copy of the charge so they can be familiar with what the charge
9 is and make recommendations for changes in it. And I think it
10 would be a waste of your time to remain here today because the
11 charging conference generally takes at least an hour, and
12 counsel haven't had an opportunity to read the charge yet. I
13 think that's a better way, and come back tomorrow and, at 9:30,
14 and you'll hear the summations of counsel and the charge of the
15 Court. You should have the case tomorrow morning at the end of
16 the morning, if you could get here at 9:30, and the heat isn't
17 too bad. So you're excused until 9:30 tomorrow morning.
18 Please be prompt and we'll try and get you the case by
19 lunchtime.

20 (Jury exits the courtroom)

21 THE COURT: All right.

22 (Jury not present)

23 THE COURT: You'll want time to go over the charge.
24 What time do you want to meet on the charge, counsel?

25 MR. RUBINSTEIN: You want to meet at 2:00 o'clock,

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Farnsworth - redirect

1 your Honor?

2 THE COURT: At 2:00 o'clock. Enough time? Okay.

3 MR. RUBINSTEIN: I would think so.

4 THE COURT: It ought to be. It's 12:00 o'clock now.

5 MR. EVERDELL: Yeah.

6 THE COURT: Fine.

7 MR. KWOK: That's fine.

8 THE COURT: All right, see you at 2:00 o'clock.

9 MR. KWOK: Thank you.

10 MR. RUBINSTEIN: Thank you, your Honor.

11 THE COURT: For the charge.

12 (Luncheon recess)

13 (Continued on next page)

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Farnsworth - redirect

1 A F T E R N O O N S E S S I O N

2 2:10 p.m.

3 THE COURT: Has everyone had a chance to go over the
4 charge? I have a number ever changes myself that I found, so
5 why don't we go to four pages in. I don't think we have any
6 stipulations of testimony, did we?

7 MR. KWOK: No, we did not, your Honor.

8 THE COURT: Strike that bottom of page 3.

9 MR. EVERDELL: To the top of page 4?

10 THE COURT: To the top of page 4, and strike the
11 "also" in the following paragraph?

12 MR. RUBINSTEIN: Yes, your Honor.

13 MR. KWOK: Yes.

14 THE COURT: Anything up until page 11?

15 MR. KWOK: At the bottom of page 11 there is a section
16 on law enforcement witness.

17 THE COURT: That's what I was coming to. I don't
18 think we need law enforcement witness. Does anyone want
19 government employee?

20 MR. RUBINSTEIN: Well, isn't OIG law enforcement?
21 Riley is OIG.

22 THE COURT: She is an enforcement person?

23 MR. RUBINSTEIN: Well, she works for the Office of
24 Inspector General.

25 THE COURT: She is not enforcement. She is not law

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Farnsworth - redirect

1 enforcement. She is an auditor. I thought government employee
2 would be sufficient.

3 MR. RUBINSTEIN: That's fine.

4 THE COURT: And you can have that. So, I will just
5 make that change in the first, second and next to last line on
6 that page.

7 As I go through, the next thing would be defendant's
8 testimony, which we would strike. Is everyone happy up to page
9 13?

10 MR. RUBINSTEIN: I have nothing going on up to page
11 13, your Honor.

12 THE COURT: Anything from 13 up to 20? 18, I guess I
13 should say.

14 MR. RUBINSTEIN: None by the defense.

15 THE COURT: I will read the indictment aloud. Then I
16 have quoted from the statute. Does anyone have any problem?

17 MR. RUBINSTEIN: No, your Honor.

18 MR. KWOK: No, your Honor.

19 THE COURT: Now, I get over to the next section, page
20 19. Can't we eliminate "property" and just -- it says money or
21 property. And this case doesn't involve any property as I
22 understand it. It's in the statute. People will hear it in
23 the statute or hear it in the indictment, but it really
24 involves money, so I thought I could eliminate the word "or
25 property" throughout. But I want to hear from counsel.

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Farnsworth - redirect

1 MR. KWOK: The government has no problem with that.

2 MR. RUBINSTEIN: I have no problem with it, Judge.

3 THE COURT: So then on page 19 I will strike "or
4 property".

5 MR. RUBINSTEIN: It's in third element and fifth
6 element.

7 THE COURT: Third, fourth and fifth element.

8 Now, I would put the "without authority" after the
9 defendant, I think, in the third paragraph as opposed to having
10 it at the end of the paragraph.

11 MR. RUBINSTEIN: Where are you saying, your Honor?

12 THE COURT: In the third paragraph, paragraph three, I
13 would take the "without authority" which I tagged on to the end
14 of the third element and place it after the defendant, so that
15 it mirrors the way in which the statute language is in
16 paragraph (a)(1)(A) of Section 666. And I would also be
17 inclined to strike "belonged to" in the fourth paragraph.
18 Misapplied money under the care, custody and control of CASI.

19 MR. RUBINSTEIN: Well, let's deal with -- I don't have
20 a problem with striking "or property". What I have is a
21 problem with the language "misapplied money belonging to the
22 care and control of CASI" because either --

23 THE COURT: I would strike the "belong to" and just
24 say "under the care, custody or control of CASI."

25 MR. RUBINSTEIN: But, your Honor, this definition -- I

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1 think your Honor should put that this definition does not
2 include any monies of Dr. Karron, whether salary or otherwise.
3 I mean the fact of the matter is it's our contention that it
4 wasn't just money.

5 The way it reads now any money spent by CASI, you are
6 suggesting that it belongs to the grant.

7 THE COURT: No, I'm trying not to suggest that. I'm
8 trying to limit that so that in fact it has to be grant money
9 that's misapplied.

10 MR. RUBINSTEIN: Well, would your Honor consider
11 "misapplied grant money"?

12 THE COURT: Well, maybe the smart thing to do is to
13 address how we phrase the third or fourth element -- the fourth
14 element.

15 After you read the changes that I think are necessary
16 in the longer versions of the elements, since after we mention
17 what the elements of the crime charged are, then I go into what
18 those elements are and give further instructions on them. And
19 I have got changes there that I think once you listen to, then
20 we can go back and see whether the shortened version that's
21 supposed to tell the jury what the elements are is a fair
22 statement of the longer version. All right?

23 So, by going to the second element -- because I don't
24 think there is a problem in terms of the first element, being
25 an agent of CASI. I think you probably all agree with that.

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Farnsworth - redirect

1 MR. RUBINSTEIN: We concede that.

2 THE COURT: The second element, I would like to add at
3 the end -- I have this last sentence. "You can choose any
4 period of federal funding you want," and I would say, "as long
5 as" -- which is in there -- "you unanimously find that the acts
6 of misapplication charged in the indictment occurred in that
7 one year period."

8 So, I would make them have a unanimous finding of a
9 period of one year, what that consists of, whether it begins
10 October 1 or January 1 and ends on September 30 or December 31.

11 MR. KWOK: The government has no problem with that.

12 MR. RUBINSTEIN: I have no problem with that, your
13 Honor.

14 THE COURT: Then when you get to the third element I
15 struck the word "property" out. Then I added in the first full
16 paragraph on page 21, "In this case, to intentionally misapply
17 property means to intentionally apply grant money received by
18 CASI in a manner in which the defendant knew was unauthorized
19 under the terms and conditions of the grant."

20 MR. RUBINSTEIN: I would just ask that your Honor put
21 in there "excluding salary".

22 THE COURT: Right after that, "Misapplication of
23 money, however, does not apply to bona fide salary, wages,
24 fringe benefits or other compensation paid or expenses paid or
25 reimbursed in the usual course of business." So, that's the

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1 following sentence. So, it seems to me that covers what you
2 just suggested.

3 MR. RUBINSTEIN: I think so, Judge. I know that the
4 last line in the paragraph above is what your Honor spoke to us
5 about, "and even if such use benefited CASI in some way," and
6 that's language from the Tenth Circuit case. I'm not very
7 happy with the Tenth Circuit in this case, and I would have to
8 object to the inclusion of --

9 THE COURT: I'm not sure whether it is or is not in
10 the Tenth Circuit. I think it's from Erlacker.

11 MR. RUBINSTEIN: I am afraid it was in Erlacker.

12 MR. EVERDELL: Erlacker is the Second Circuit case.

13 MR. RUBINSTEIN: Erlacker is the Southern Circuit.

14 THE COURT: Second Circuit.

15 MR. RUBINSTEIN: Yeah. I saw Erlacker. A lot of
16 times cases are fact driven.

17 THE COURT: I agree they are fact driven, and that's
18 why I didn't follow Erlacker and I followed the Tenth Circuit.
19 I also think it's in Sand as that way.

20 But I distinguished Erlacker, because in Erlacker it
21 involved funds that the police department received, and what
22 the defendant did there was to disregard the instructions of
23 his superiors about how money should be spent, and that seems
24 to me to be a different situation than the case here, where you
25 have a not-for-profit headed by the defendant who received the

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Farnsworth - redirect

1 grant. It's more like a not-for-profit in the Tenth Circuit
2 case. Then we had another case where we found the same
3 language in -- the Tenth Circuit case being United States v.
4 Frasier, 53 F.3d 1105. And when I looked at the Tenth Circuit
5 case, they state the actual elements that the government was
6 required to prove, and that's what alerted me to the "without
7 authority" being applicable to the intentional misapplication
8 of property.

9 MR. RUBINSTEIN: Well, that's what my concern is, that
10 that language kind of gives an instruction that says that's the
11 intent, and it takes the intent issue away from the jury's
12 determination. That's my concern.

13 THE COURT: I'm sorry. I don't want to take anything
14 away from the jury, so let me understand what your point is.

15 MR. RUBINSTEIN: I just feel, your Honor, that the
16 language "even if such use benefited CASI in some way" -- now,
17 the defendant's intent was, we intend to argue, was to benefit
18 CASI. And we have the situation where we don't have a
19 direction or a commandment that you have to use the money A, B
20 or C. We have a kind of fluid situation here under the ATP
21 grant that you are allowed to revise.

22 THE COURT: In some ways the ATP grant is fluid in for
23 instance the 10 percent rule and in some other ways, but those
24 are -- I tried to avoid in this language anything that would
25 influence the jury in any way.

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1 In fact, what it does is -- I will read that sentence
2 again to you, or I will read the paragraph to you so to make
3 sure you have it, because I don't quite understand how I'm
4 taking away anything from the jury's determination.

5 "In this case, to intentionally misapply money means
6 to intentionally apply the grant money received by CASI in a
7 manner in which the defendant knew it was unauthorized under
8 the terms and conditions of the grant. Misapplication of
9 money, however, does not apply to bona fide salary, wages,
10 fringe benefits or other compensation paid, or expenses paid,
11 or reimbursed in the usual course of business."

12 Now, taking the next paragraph too. "As I said, the
13 government must prove beyond a reasonable doubt that the
14 defendant acted intentionally in misapplying CASI's money. To
15 find that the defendant acted intentionally, you must be
16 satisfied beyond a reasonable doubt that the defendant acted
17 deliberately and purposefully, that is, the defendant's
18 misapplication must have been the product of the defendant's
19 conscious objective to spend the money for an unauthorized
20 purpose rather than the product of a mistake or accident or
21 some other innocent reason."

22 The government may have some objection.

23 MR. KWOK: No, the government thinks that this is a
24 very fair instruction. We understand why Mr. Rubinstein might
25 object to the "even if such use benefited CASI in some way"

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1 language, but that's the law according to the Second Circuit
2 and the Frasier case that your Honor cited from the Tenth
3 Circuit.

4 MR. RUBINSTEIN: Judge, I don't think I want to waive
5 this objection.

6 THE COURT: You have made your objection. I have no
7 objection to objection, but if you want to reason with me, I'm
8 perfectly open to hearing whatever reason you have.

9 MR. RUBINSTEIN: I think that I have exhausted my
10 reasoning at this point that this is a fluid situation and
11 that, therefore, there was no commandment that it was this way
12 or the highway kind of talk.

13 We had in Exhibit 4 that you can revise the budget at
14 the end of the year, clearly and particularly in this case,
15 where they never went through the process of resolving these
16 issues within the agency, so --

17 THE COURT: Well, one of the issues -- but I don't
18 think you want me to approach it this way -- but one of the
19 issues, it is true that some of the evidence that was
20 offered -- and if you want me to strike it, I will move to
21 strike some of that evidence -- does not really go to what the
22 government is required to prove here.

23 I think I mentioned earlier the purchase of the movie
24 screen or what have you, I don't think that was shown to have
25 exceeded the budget, or the flexibility under the budget, or

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1 that it was something that was not -- that required approval by
2 the grantor. There are some items like that that may have been
3 offered in evidence that I don't think -- and I haven't heard
4 from the government on this. It may be that they can show that
5 it exceeded the budget, but I didn't pick it up in listening to
6 the evidence that there was required approval for that
7 expenditure.

8 And I don't think there would be any required
9 approval -- prior approval for a number of the expenditures
10 that were made because they weren't appropriate under the terms
11 of the grant, because they were for indirect costs of the
12 business and not shown to be costs for the research undertaken
13 by CASI for the National Institute of Technology and Science --
14 or Science and Technology. Because there are -- I mean --

15 Well, then the fourth element, I don't think it's
16 misapplied money belonging to CASI. It's under the control of
17 CASI.

18 MR. EVERDELL: Your Honor, just so I'm clear, are you
19 also carrying forward the change "belong to," cutting that out?

20 THE COURT: I was going to strike out that.

21 MR. RUBINSTEIN: What's that?

22 THE COURT: I was going to strike out "belong to".

23 MR. EVERDELL: And then just have "was in the control
24 of CASI"? Is that what you're proposing?

25 THE COURT: In the joint custody or control of CASI.

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1 I was going to leave that.

2 MR. EVERDELL: Yeah.

3 MR. RUBINSTEIN: I would ask for the same language
4 that you have in the first full paragraph under element 3.

5 THE COURT: First full paragraph where?

6 MR. RUBINSTEIN: On element 3, page 21, that that be
7 included. In other words, what I'm concerned about is that
8 they may confuse money that was in the care or custody.

9 THE COURT: Well, do you want me to say misapplied
10 grant money?

11 MR. RUBINSTEIN: Misapplied grant money subject to the
12 limitation of element 3. Because it's the grant money received
13 by CASI. And then it goes on to say bona fide salary, wages,
14 fringes and benefits. I mean I think that that has to be
15 included in element 4.

16 THE COURT: Let me think about that a second.
17 the second full paragraph should be changed to say --

18 MR. RUBINSTEIN: Judge, I think that you could
19 actually charge them just up to the word "intentionally
20 misapplied".

21 "The fourth element the government must prove beyond a
22 reasonable doubt is that the money was intentionally
23 misapplied."

24 MR. KWOK: Your Honor --

25 MR. EVERDELL: Your Honor, this is starting to sound

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1 suspiciously like a tracing requirement. This element simply
2 talks about where the money was housed, where the funds that
3 came in were put. They were put in CASI's bank accounts. The
4 evidence at trial was ample. They all went into CASI's bank
5 accounts, the company bank accounts. There is no tracing
6 requirement under the Second Circuit law.

7 The issue about bona fide wages and salary is
8 appropriately in the third element because that has to do with
9 intentional misapplication of money and what doesn't count as
10 intentional misapplication of money. It doesn't count for bona
11 fide wages and salary and all those other examples.

12 This element, on the other hand, just talks about
13 where the money was housed. And the reason why it's here is
14 because the statute intentionally contemplates no tracing.
15 That was one of the reasons why the statute was enacted in the
16 first place, was to avoid the tracing requirement that existed
17 in I think 641, the theft of government funds statute. This is
18 its own statute to avoid the tracing problem.

19 So, this element just talks about where the money is
20 housed, and it should be very simple. Was it under the care,
21 custody and control of CASI, the corporate entity, which it
22 was.

23 THE COURT: I think we should say in that middle
24 paragraph, "The government must prove beyond a reasonable doubt
25 that the defendant acted intentionally in misapplying grant

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1 money." I think that's more consistent with what was said
2 before, and it might be misinterpreted by the jury if we left
3 it as CASI's money.

4 MR. KWOK: That's satisfactory to the government.

5 MR. RUBINSTEIN: That's satisfactory to the defense,
6 your Honor.

7 THE COURT: And this one is a separate point. This
8 one is that they have to find that the grant money was under
9 CASI's control, that the grant money was under CASI's control.
10 And it seems to me -- it says "misapplied grant money under the
11 control of CASI," and then "The fourth element the government
12 must prove beyond a reasonable doubt is that the money that was
13 intentionally misapplied was in the care and custody or control
14 of CASI."

15 If you want me to say "the grant money" --

16 MR. RUBINSTEIN: Yes.

17 THE COURT: -- I will. "Although the words care,
18 custody and control have slightly different meanings, for the
19 purpose of this element they express a similar idea. All that
20 is necessary is that CASI had control over and responsibility
21 for the property." For the property. "For the money". I will
22 strike "property".

23 MR. RUBINSTEIN: Judge, can you read the whole thing?

24 THE COURT: Which element would you like me to read?

25 MR. RUBINSTEIN: The fourth element.

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Farnsworth - redirect

1 THE COURT: Sure. Fourth element: Misapplied grant
2 money under the control of CASI. "The fourth element the
3 government must prove beyond a reasonable doubt is that the
4 grant money that was intentionally misapplied was in the care,
5 custody or control of CASI. Although the words care, custody
6 and control have slightly different meanings, for the purposes
7 of this element they express a similar idea. All that is
8 necessary is that CASI had control over and responsibility for
9 the money."

10 For the grant money?

11 MR. RUBINSTEIN: Yes.

12 THE COURT: All right.

13 The fifth element, the third paragraph, this should be
14 changed. There is no allegation of stealing, so I would change
15 it so it reads, "You may aggregate or add up the value of
16 property obtained" -- or misapplied. Misapplied might be
17 better -- "misapplied from a series of acts by the defendant to
18 meet this \$5,000 requirement, so long as you find that each act
19 of misapplication was part of a single scheme by the defendant
20 to misapply money under the care, custody and control of CASI."
21 Then it goes on. We're changing the third line "federal
22 benefits" to "federal grant". And in the last line I changed
23 "benefits" to "grant".

24 And on the very last line on page 23 of that section I
25 would strike "embezzled or stolen" and say "misapplied". So it

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1 reads, "The government need not trace the \$5,000." I may
2 change that language --

3 MR. RUBINSTEIN: Judge, I --

4 THE COURT: -- "alleged to be misapplied back to the
5 federal grant provided." Back to the federal grant. I would
6 strike "provided by the government" because the government is
7 the prosecution. It's referred to as the prosecution in the
8 beginning of the sentence, and if you put it at the end of the
9 sentence too I think it is possibly confusing to the jury
10 because of the way it reads.

11 MR. EVERDELL: We don't want it to be thought that we
12 provided to CASI.

13 THE COURT: I didn't think you wanted it that way.

14 MR. RUBINSTEIN: Your Honor, Judge, you may think I'm
15 losing it, but --

16 THE COURT: No.

17 MR. RUBINSTEIN: -- but I think that the statute
18 requires that you use the word "steals".

19 THE COURT: What?

20 MR. RUBINSTEIN: The statute requires that you use the
21 word "steals".

22 THE COURT: Steals?

23 MR. RUBINSTEIN: The language of the statute. And I
24 think that's in --

25 THE COURT: I don't want to say steal, because I don't

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1 think steal -- steal implies it was used for his own benefit --

2 MR. RUBINSTEIN: Well --

3 THE COURT: -- as opposed to being misused, as opposed
4 to being -- I mean --

5 MR. RUBINSTEIN: I think that misused dilutes the
6 intent that a person has to have in order to be guilty. As a
7 matter of fact, it's interesting because Mr. Gisendo had
8 suggested I make that request, and I told him I thought it
9 would dilute what the statute requires, which is that embezzle,
10 steal or take --

11 THE COURT: Well, I will agree with you to this
12 extent. I think it has to say intentionally misapplied.

13 MR. KWOK: That's fine with the government. I mean
14 our objection is that the statute has many parts, embezzles,
15 steals, obtains by fraud, and then it goes on to say
16 intentionally misapplied. The latter prong is what the
17 government charges. So, I don't think Mr. Rubinstein is at all
18 correct when he says the statute requires the word steal. We
19 are not charging that part of the statute.

20 MR. EVERDELL: In fact the Erlacker case specifically
21 recognizes there are five separate prongs to the statute,
22 intentionally misapplied being the fifth prong. And this
23 requirement of \$5,000 or more applies to each of the five
24 prongs, so there is no requirement to say steal here.

25 MR. RUBINSTEIN: I think that including the word

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1 "intentionally" which the statute has --

2 MR. KWOK: That's perfectly fine.

3 THE COURT: If I put in "intentionally" doesn't that
4 do it?

5 MR. RUBINSTEIN: That does it.

6 THE COURT: OK. All right. My right hand here says,
7 going back to paragraph fifth, to say you may aggregate or add
8 up the value of property intentionally misapplied in a series
9 of acts by the defendant to meet this \$5,000 requirement, so
10 long as you find out that each act of intentional
11 misapplication was part of a single scheme.

12 I think she has improved it for clarity so there will
13 be no mistake about it.

14 MR. RUBINSTEIN: Yes, that sounds all right.

15 THE COURT: I don't have much else.

16 Uncalled witnesses?

17 MR. RUBINSTEIN: My only problem, your Honor --

18 THE COURT: Well, do you want to go back? We didn't
19 go back to the shortened version of having gone through the
20 four elements or five elements. We didn't go back to the
21 shortened sort of synopsis or whatever you want to call it.

22 MR. RUBINSTEIN: Right. My problem is that if the
23 jury -- I agree with your Honor that the actual elements
24 describe in full -- lay it out. But if the jury focuses -- and
25 this is not a situation -- because your Honor gives the

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1 indictment to the jury, and it's not a situation where the jury
2 comes back and you reinstruct them. So, I'm concerned that
3 sometimes, because the short version is much easier for people
4 to focus on, that I just am concerned that we should have some
5 more neutral language.

6 THE COURT: Well, I read the indictment to the jury,
7 and I also give them the indictment, and I also give them a
8 copy of the charge.

9 MR. RUBINSTEIN: I know that, Judge, but I'm saying
10 that's why we should incorporate some of the language that you
11 have in the broader version. Not the whole thing obviously.

12 THE COURT: Well, I thought --

13 MR. RUBINSTEIN: Particularly, your Honor --

14 THE COURT: You will see that each one of them
15 "intentionally" is emphasized.

16 MR. RUBINSTEIN: Well, the only thing I'm asking your
17 Honor to include is that in the fourth, on page 19 --

18 THE COURT: Page 19.

19 MR. RUBINSTEIN: "the misapplied money "--

20 THE COURT: -- "was under the care, custody and
21 control of CASI."

22 MR. RUBINSTEIN: No. The misapplied ATP money, grant
23 money --

24 THE COURT: All right. You've got a point.

25 I put in "grant money" after "misapplied. "Misapplied

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1 grant money" in each case. Do you want that?

2 MR. RUBINSTEIN: Yes.

3 THE COURT: Good.

4 MR. RUBINSTEIN: "Misapplied grant money was under the
5 care, custody or control of CASI."

6 THE COURT: All right. I will read them back now. I
7 will read third, fourth and fifth back. Let's strike "federal
8 benefits" in second and just say "a federal grant in excess of
9 \$10,000". Is that all right?

10 MR. RUBINSTEIN: Yes.

11 MR. KWOK: Yes.

12 THE COURT: And then the third will read, "During that
13 one year period, the defendant without authority intentionally
14 misapplied grant money." Or should it be "the grant money"?

15 MR. RUBINSTEIN: I guess so. I guess it should be
16 "the grant money".

17 THE COURT: Then the next would be be, fourth, "The
18 misapplied grant money was under the care, custody and control
19 of CASI." Fifth, "The value of the grant money intentionally
20 misapplied by the defendant was at least \$5,000."

21 MR. RUBINSTEIN: That's acceptable.

22 THE COURT: OK?

23 MR. RUBINSTEIN: Yes, your Honor.

24 MR. EVERDELL: Your Honor, the only thing I just want
25 to be clear for the record is that we all understand that there

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1 is no tracing requirement for the statute, and defense counsel
2 intends to argue that we have to trace each bill, because I
3 believe he is alleging the defendant contributed in some way to
4 the pot of money with his own funds and that we can't tie up
5 certain purchases to actual grant money as opposed to the money
6 he may have put in himself, even though he took out much more.
7 That is inappropriate because that's not what the statute
8 requires.

9 And the only fear the government has with including
10 all of this specifically tied grant money is that it's going to
11 suggest to the jury that we have to tie it up, which is not the
12 case. It's simply the case we have to show the grant money was
13 deposited in CASI and it was intentionally misapplied without
14 authority, as the statute says.

15 THE COURT: Is the language in the charge sufficient
16 for your purposes to show that it's not necessary to trace the
17 money? If you've got some suggestions there, I will listen to
18 them.

19 MR. EVERDELL: One moment, your Honor.

20 THE COURT: What?

21 MR. KWOK: One moment, your Honor.

22 MR. EVERDELL: Just one moment.

23 THE COURT: Sure.

24 MR. EVERDELL: Your Honor, we have been talking about
25 this. It's a little hard to incorporate this concept into this

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1 language. I just note it for the record because I am putting
2 defense counsel on notice that if he intends to argue about
3 this in his closing --

4 THE COURT: Do you want something about fungible? I
5 mean money is fungible.

6 MR. EVERDELL: Correct, your Honor.

7 THE COURT: I've forgotten in what cases, but I have
8 given instructions in connection with the fact that money is
9 fungible and not traceable.

10 MR. EVERDELL: All right. We could say something like
11 the value of the money intentionally misapplied by defendant was
12 at least \$5,000.

13 THE COURT: Where are you?

14 MR. EVERDELL: I'm looking at the fifth element.

15 MR. RUBINSTEIN: Page, please?

16 MR. EVERDELL: Page 19. "The value of the money
17 intentionally misapplied by the defendant was at least \$5,000
18 but need not be traceable to the federal grant," or something
19 like that.

20 THE COURT: Where do you want this?

21 MR. EVERDELL: I was looking at the fifth element on
22 19.

23 THE COURT: I see the final element.

24 I see. You're looking at page 19.

25 MR. EVERDELL: Yes, your Honor.

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1 THE COURT: What would you like to get there?

2 MR. EVERDELL: I'm suggesting for the fifth element on
3 19, something to the effect of, "Fifth, the value of the money
4 intentionally misapplied by defendant was at least \$5,000 but
5 need not be traceable back to the federal grant."

6 MR. RUBINSTEIN: It has to be grant money.

7 THE COURT: I have a problem. I began thinking of
8 this whole thing as to whether traceable is the right --

9 MR. RUBINSTEIN: Judge --

10 THE COURT: -- word.

11 MR. RUBINSTEIN: Judge, they have no concern, because
12 I'm not going to argue it. I'm not going to argue tracing of
13 funds and what have you.

14 THE COURT: Well, I would like it to be right anyway,
15 because juries are imaginative. They are very good, juries,
16 and they work hard, and they take their duties very seriously.
17 So, I don't want to have something in the charge that we think
18 we might have to deal with in a note. If possible, it's good
19 to anticipate these things so we don't have notes.

20 MR. KWOK: Well, if I may, your Honor, I think Mr.
21 Everdell's suggestion is a good one, especially because we
22 added the word "grant" to money in all of the short versions of
23 the charge on page 19, and so I think to balance it out, to
24 make things even handed --

25 THE COURT: I see that. I don't have any problem with

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1 what he is trying to do. I am merely trying to think of the
2 best way to accomplish what he says in a way that isn't
3 confusing to the jury. That's what I'm worried about, is the
4 confusing nature. Because you get into it later. I think
5 maybe it would be better to deal with it in the element rather
6 than under the shortened version.

7 MR. EVERDELL: Your Honor, I think in all fairness for
8 it to be balanced, I think --

9 THE COURT: You mean you want me to leave out "grant
10 money" in the fifth?

11 MR. EVERDELL: If we're going to do the short versions
12 on page 19, I think the concept your Honor is trying to get at
13 with "intentionally misapplied" is sufficient, and then leaving
14 out "the grant money". So, for the third element, for
15 example --

16 THE COURT: Because it is -- the fourth says it's got
17 to be -- the third and fourth --

18 MR. RUBINSTEIN: Judge, you have that language. The
19 traceable language is on page 22. They have that in the charge
20 already.

21 THE COURT: I know, but I think what they are looking
22 at is in the short version. And when you get to the fifth
23 element, that if you add in grant there it suggests that the
24 money might have to be traced.

25 MR. RUBINSTEIN: I don't have a problem with taking

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1 out the word "grant".

2 MR. EVERDELL: From all of the short elements?

3 MR. RUBINSTEIN: No, just element five, as to element
4 five.

5 THE COURT: Just in the fifth element.

6 MR. RUBINSTEIN: Just talking about the fifth element.

7 THE COURT: Just the fifth element.

8 Is there any change you want on 21, Mr. Everdell?

9 MR. EVERDELL: One second, your Honor.

10 THE COURT: Wait a minute. It's not page 21. It's
11 page 22.

12 MR. EVERDELL: I think the fifth element, the longer
13 investigation of it, from 22 to 23, was OK as it was last read,
14 as it was last amended.

15 THE COURT: All right.

16 MR. EVERDELL: My concern is still though on page 19,
17 the short elements. We keep including, for example, the third
18 and the fourth the word "grant". So, for example, third
19 element, "During that one year period the defendant without
20 authority intentionally misapplied the grant money. Fourth:
21 The misapplied grant money was under the care" --

22 THE COURT: Yes, we added in on all those elements
23 just now.

24 MR. EVERDELL: Yes. But I think it's a little
25 unbalanced now, because that is starting to suggest I believe

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1 to the jury that there is a tracing requirement for this money,
2 that it all has to be the grant money, that there has to be
3 proof that all of these expenditures were made with specific
4 grant money as opposed to it was part of a pot where other
5 money might have been commingled at certain times but that's
6 irrelevant to the jury's consideration because it doesn't have
7 to be specific.

8 THE COURT: Well, we all agree that it's got to be
9 money --

10 MR. RUBINSTEIN: And that's what element five is for.

11 THE COURT: The fungibility is what the problem is,
12 isn't it?

13 MR. EVERDELL: Yes, your Honor, that's correct, the
14 fungibility, the fact that --

15 THE COURT: -- that it does --

16 MR. EVERDELL: And at least as defendant has brought
17 up in trial several times -- and I assume he will argue in some
18 way on closing, that there was an infusion of \$37,000 by the
19 defendant of his own personal loans to the company. Of course
20 we argue that's offset by the amount of loans that he took out,
21 so there wasn't really an additional source of funding. And
22 even so, \$37,000 pales in comparison to the amount of money
23 that was received by the grant.

24 But we just want to be sure that nothing in this
25 language is going to suggest to the jury that for any

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1 particular purchase or expense that we raise, that we have to
2 prove that that expense is traced specifically to ATP funds,
3 because that's assuming a burden that we don't have to under
4 the statute.

5 And I think that if we keep saying "intentionally
6 misapplied the grant money," at least in the short forms, it
7 might suggest to the jury that they have to conclude that
8 each --

9 MR. RUBINSTEIN: Well, those are those elements.

10 THE COURT: Let's think about -- I don't know what
11 your summations are going to be, but in the last few letters
12 that I have received I got the impression that the government
13 is going to argue that the defendant's expenditures violated
14 the terms of the grant --

15 MR. EVERDELL: That's correct, your Honor.

16 THE COURT: And to violate the terms of the grant that
17 would have to mean that grant money was misapplied. Because
18 let's allege that the defendant had \$100,000 in the bank and in
19 CASI's account, and he paid the rent with his \$100,000. That
20 was in the existing -- in the bank. That would not be a
21 violation of the law.

22 MR. EVERDELL: He used his own funds to pay off --

23 THE COURT: Or used CASI's funds, preexisting funds.

24 MR. EVERDELL: Right. No, that's correct, your Honor.

25 MR. KWOK: If I may, your Honor. I still think on

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1 balance --

2 THE COURT: So, you have to distinguish somehow
3 between CASI's preexisting funds and the grant funds.

4 MR. EVERDELL: True, although there is no evidence in
5 the record that there was any preexisting funds. I mean all
6 evidence to the contrary, was that the grant funds --

7 THE COURT: The stated evidence is that there aren't
8 any.

9 MR. EVERDELL: That's right, your Honor.

10 THE COURT: Weren't any.

11 MR. KWOK: Just to address my comments specifically to
12 --

13 THE COURT: There is circumstantial evidence that
14 there wasn't any because of the immediate expenditures for past
15 due bills.

16 MR. EVERDELL: Sorry? I didn't follow, your Honor.

17 THE COURT: There is circumstantial evidence that
18 there wasn't any because of immediate expenditure of monies
19 that were long past due.

20 MR. EVERDELL: Yes. And there was specific testimony
21 by both business managers that the ATP funds were the only
22 funds they ever saw coming into the company, and there is also
23 Ms. Riley's analysis which shows exactly what funds went into
24 the CASI bank accounts over the time period we are talking
25 about, year one and year two of the grant, none of which -- and

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1 that includes the \$37,000 that the defendant said he made as an
2 emergency loan. That's taken into account.

3 There is simply nothing else, with the exception of I
4 think she mentioned about \$1500 worth of refund checks or
5 something in the second year which forms that little slice of
6 the pie in year two of the grant.

7 THE COURT: I don't remember what the balance was in
8 the beginning in the account, however. But what I'm saying is
9 that I think you have to show that there was a misapplication
10 of grant money, otherwise he doesn't need authority, otherwise
11 he doesn't misapply money.

12 MR. KWOK: Your Honor, I think --

13 THE COURT: How do you misapply if it was not grant
14 money?

15 MR. KWOK: I think that's right, your Honor. My only
16 point is I just share defense counsel's concern that he
17 mentioned a moment ago, that the short version also needs to be
18 accurate, not just the long version.

19 THE COURT: I agree with you.

20 MR. KWOK: And so if we were to add the word "grant"
21 in front of every one of the elements, the third, the fourth
22 and the fifth --

23 THE COURT: The fifth has been -- Mr. --

24 MR. RUBINSTEIN: I agreed to take out the "grant" on
25 the fifth element for that reason, because of the tracing, so I

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1 thought that it would be balanced to take the word "grant" out
2 of the fifth element. So, on that element they have the
3 tracing provision that you have in your language on pages I
4 believe 22 and 23.

5 MR. KWOK: But, your Honor, realistically I don't
6 think any juror will be able to pick up on the significance of
7 the absence of the word "grant" in the fifth element which it
8 has just been mentioned in the third and the fourth element in
9 the short version.

10 So, the government would just ask you to amend or to
11 add to the end of the fifth element in the short version
12 something along the lines of what Mr. Everdell just suggested,
13 that "at least \$5,000, which needs not be traceable back to the
14 federal grant". I think that would do it.

15 (Continued on next page)

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1 MR. RUBINSTEIN: I don't think that's appropriate, and
2 I don't think that's the language that --

3 THE COURT: It's unusual to have that kind of a
4 statement in the elements.

5 I think my feeling would be what we ought to do is
6 have a section on traceability, something about fungibility. I
7 can't think what kind of a case I might have a charge on that.

8 MR. RUBINSTEIN: Your Honor, in their request, the
9 general instructions, they don't -- they merely ask, on page
10 four of their request, the value of the intentionally
11 misapplied money was at least \$5,000.

12 MR. EVERDELL: Yes, but now we've amended the other
13 things and we're --

14 THE COURT: I know.

15 MR. EVERDELL: -- we're trying to make sure it's
16 balanced.

17 THE COURT: Well, we could do something like this --

18 MR. RUBINSTEIN: You know, Judge, I --

19 THE COURT: Let me make a suggestion.

20 MR. RUBINSTEIN: I'm sorry.

21 THE COURT: -- before, and then I'll hear yours.

22 We can do something -- now each of these elements
23 have -- need further description, so listen closely as I
24 explain the requirements as to each of these elements, and then
25 include the tracing element in the fifth or the end of the

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1 fifth element.

2 MR. RUBINSTEIN: You know, Judge --

3 THE COURT: But I think it ought to be expanded a
4 little to show that because the fungibility issue need not
5 trace.

6 MR. RUBINSTEIN: I think that that tracing really
7 applies more in the bribery section than to 666 section. I'm
8 not really 100 percent confident -- I'm not exactly comfortable
9 with the tracing on this kind of case. It really -- there's a
10 difference between the misappropriation and the bribery portion
11 of 666.

12 MR. EVERDELL: Your Honor, I think that was resolved
13 by the Sabri case in the Supreme Court, which I believe
14 applied, didn't specifically apply to the bribery context. It
15 said there's simply no nexus requirements for the funds in 666
16 cases. So I don't think that that's correct.

17 So, if I could just talk to Mr. Kwok.

18 (Pause)

19 MR. EVERDELL: Your Honor, I think -- you know, if the
20 Court is inclined to leave the short form of the elements on
21 page 19 as is, then we would welcome the additional language
22 that you suggested about needing further explication, but also
23 to include in the element that we're talking about fifth
24 element. A more expansive discussion of fungibility, I don't
25 have a particular charge I can offer you, but if you have

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1 something in the past --

2 THE COURT: Your appellate group ought to have one.

3 MR. EVERDELL: That's possible, your Honor.

4 THE COURT: I'd call them.

5 MR. RUBINSTEIN: Judge, if you -- the language in

6 Sabri says --

7 THE COURT: Which, in what, sir?

8 MR. RUBINSTEIN: In Sabri, the language said that it
9 is true, Justice Sabri says, that not every bribe or kickback
10 offered or paid to an agent of government covered by 666(b)
11 will be traceably skimmed from specific federal payments.

12 MR. EVERDELL: Your Honor, my understanding of Sabri
13 is it's not limited to the bribery context. It talks about the
14 purposes of the statute and the fact take it was passed to fill
15 gaps in existing statutes.

16 The purpose of the statute is to make sure that the
17 recipients of federal funds were proper recipients and proper
18 stewards of the federal money. So it was related not to the
19 money in particular, there were no traceability requirements,
20 but simply that the person or entity that received the money
21 was a good steward of that money, and that he didn't have to
22 show particular traceability. Because the prior existing
23 statutes, if the money got commingled enough, you couldn't use
24 the statute to prosecute the case. So this was specifically
25 passed in order to avoid that problem, and it applies to, as I

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1 understand it, to every single prong of the statute.

2 MR. RUBINSTEIN: Well, how do you trace your own
3 money, your Honor?

4 THE COURT: What?

5 MR. RUBINSTEIN: The problem is that unlike where you
6 get illegal money -- I can understand you don't get -- you get
7 illegal money, you accept the bribe. Now what difference does
8 it make if you spent the money that you got as a bribe or you
9 spent -- you have a \$100 in a bribe and you have \$100 that you
10 got in your salary, so now you have \$200. What difference does
11 it make which monies you spent at that point? I understand why
12 there's no tracing requirement. But if you have legitimate
13 money, you start out with legitimate money -- the grant money
14 is legitimate; why should there be any, under these
15 circumstances, tracing? I don't think that the courts have
16 gone that far. There's something --to me there's something
17 wrong with the idea that if I spent --

18 THE COURT: The point is once you put it in a bank
19 account, anything else in the bank account, or you can't -- you
20 can't trace it, because money is fungible.

21 MR. RUBINSTEIN: Right. But I'm saying that that's
22 because the money, the bribe money is bad money. Here the
23 grant money is good money, and so therefore it's a different
24 concept. If he is spending the good money wrongfully, he's
25 spending the good money -- what they're saying, their

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1 argument --

2 THE COURT: Stop and think a second, the federal money
3 isn't given for bribes.

4 MR. RUBINSTEIN: Right.

5 THE COURT: So it's not bad money when it's received.

6 MR. RUBINSTEIN: No, I'm saying it's not bad money.
7 I'm saying that's right. In this instance, the money received
8 is good money, as opposed to a bribery situation where the
9 money you're receiving is bad money.

10 THE COURT: Money you received -- the bribery part of
11 666 applies to money that was received as good money and spent
12 as bad money, and it's all spent from the same pot.

13 MR. RUBINSTEIN: I disagree with your Honor. The
14 bribe money, I submit, is the bad money, that pollutes the good
15 money. And you can't argue that, gee, I took this bribe, but I
16 spent my good money and I kept the bribe money separate. That
17 is what I think is the context of this argument. Because there
18 is a difference between the bribery portion of the 666 --

19 THE COURT: Well, it presupposes an intent, an intent
20 to bribe before you receive the funds. Generally, in those
21 cases the bribe is made subsequent to receipt of funds.

22 I think you better call and see if you haven't got
23 something on fungibility tracing over there as to charge.

24 MR. KWOK: We will do that.

25 THE COURT: I can't think of a case just because

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1 I'm --what about the money laundering cases? Mr. Kwok, money
2 laundering cases, ask them about money laundering cases.

3 MR. KWOK: Certainly.

4 MR. RUBINSTEIN: I don't to get ahead of myself. I
5 still haven't made my Rule 29 motion, which would make all of
6 this academic. I will wait for the government.

7 THE COURT: You better wait till the government comes
8 back.

9 MR. RUBINSTEIN: To return.

10 (Recess)

11 (In open court)

12 MR. RUBINSTEIN: Your Honor, my let me say that Sabir
13 relates to a violation of Section 666(a)(2), which involves the
14 bribery portion.

15 THE COURT: I'll look at it. Let's finish the charge
16 and come back to this.

17 MR. RUBINSTEIN: Okay.

18 MR. KWOK: I think that's --

19 THE COURT: Then I'll hear your Rule 29 if we don't
20 have anything and -- go ahead.

21 After -- is there any need for uncalled witnesses
22 or --

23 MR. RUBINSTEIN: Yes, your Honor.

24 MR. KWOK: Yes, your Honor.

25 THE COURT: Okay, then leave that in.

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1 MR. RUBINSTEIN: Your Honor, I notice it's the
2 standard language on the uncalled witnesses. But in this case
3 where the gravamen of the Government's case is Miss Hayes, I
4 just feel that --

5 THE COURT: Have you got a suggestion?

6 MR. RUBINSTEIN: Pardon?

7 THE COURT: What's your suggestion?

8 MR. RUBINSTEIN: Well, that the, although -- well, the
9 government has the ability to confer immunity on a witness and
10 to enter into agreements with the non-prosecution agreements
11 with the witness. And the defense, who has the same right to
12 call the witness, doesn't have those tools available.

13 THE COURT: But that doesn't have to do with calling a
14 witness. There's no allegation here that immunity has been
15 granted or --

16 MR. RUBINSTEIN: No. I'm saying that they have that
17 ability. You know, the language is both the government and the
18 defense have the same power to subpoena a witness to testify.

19 THE COURT: I'll have to see your request to charge
20 from you along that. That's a different issue and I'd have to
21 see your case and the authority for it.

22 MR. RUBINSTEIN: I'm hoping to make authority here,
23 Judge.

24 THE COURT: Well, then you'll have to give me specific
25 language and I'll have to consider it based on the language.

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1 What about particular investigative techniques, you
2 want that?

3 MR. RUBINSTEIN: Never happy --

4 THE COURT: What?

5 MR. RUBINSTEIN: I'm never happy with that, but it's
6 standard language in the federal courts.

7 THE COURT: All right. Is the character all right?

8 MR. RUBINSTEIN: Character is fine, your Honor.

9 THE COURT: Charts and summaries all right?

10 MR. KWOK: Yes.

11 MR. RUBINSTEIN: Yes, your Honor.

12 THE COURT: Like that? See the exhibits, hear
13 testimony, communications with the Court?

14 MR. RUBINSTEIN: That's fine, your Honor.

15 THE COURT: Submitting the indictment, need for
16 unanimity, verdict form. We got a verdict form?

17 MR. RUBINSTEIN: Yes. I've approved the verdict form
18 that --

19 THE COURT: You have, all right.

20 Then I guess any thoughts about the, any problems with
21 juror number one being the chair person?

22 MR. KWOK: No, your Honor.

23 MR. RUBINSTEIN: No problem, your Honor.

24 THE COURT: All right. Are we all through with the
25 charge then, with the exception of our problem on --

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1 MR. KWOK: Your Honor, if I may make a suggestion. I
2 think for purposes of this case, it's really not necessary to
3 get into the nuance of the law about traceability, because as
4 the government contends at the end of the day it's one big pot
5 and there's really no other source of funding for CASI, other
6 than the ATP money. So if Mr. Rubinstein is fine leaving in
7 what is in the long version for the fifth element on pages 22
8 and 23, the government would have no problem leaving in the
9 short version, with the slight amendments that we just made
10 inserting the word grant in front of the third and fourth
11 element on page 19, just to avoid an extended discussion about
12 something that is really not --

13 THE COURT: All right, that is simple, I guess.

14 MR. RUBINSTEIN: No -- well, no. I mean, it's
15 classical, they want their cake and eat it.

16 THE COURT: Well, they want --

17 MR. RUBINSTEIN: They want me to abandon it.

18 THE COURT: You agreed that there's no --

19 MR. EVERDELL: We're agreeing to what you agreed to.

20 THE COURT: Traceability, they're entitled to
21 traceability.

22 MR. KWOK: And Mr. Rubinstein just argued that he
23 didn't intend to argue it.

24 MR. RUBINSTEIN: Judge, that's what I said, I
25 reconsidered it in rereading.

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1 THE COURT: All right. We'll get -- till we get
2 something from the their group, I'm trying to think of the case
3 that I had this problem in, and I think it would be -- there is
4 a better charge that goes into fungibility and, therefore, the
5 fact that you don't need to trace funds to show that they were
6 the actual funds that the government used.

7 MR. RUBINSTEIN: But I think there has to be a
8 distinction between a case that is charged under 666(a)(2), as
9 opposed to -- you look at the statute, (a)(2) relates to
10 corruptly gives -- officer agrees to give anything of value
11 person with intent to influence or reward. So I understand
12 why -- that was what my argument was about good money and bad
13 money, why there shouldn't be a traceability, if you give
14 somebody a bribe and that's the money that you're talking about
15 using.

16 But here we're not talking about (a)(2) money. We're
17 talking -- we're not talking about (a)(2). So the courts have
18 never addressed whether or not there's traceability. And
19 there's nothing -- as I said, the bribe money is difficult to
20 trace because it's fungible.

21 Here we're not talking about bribe money. We're
22 talking about grant money, which you can trace. And I'm not
23 asking for a charge that says that they have to trace the
24 money. I'm just saying that it's misleading to suggest that
25 they can't consider -- the jury can't consider which monies it

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1 was.

2 MR. EVERDELL: That's ridiculous, your Honor.

3 MR. RUBINSTEIN: The Government's argument, as Mr.
4 Kwok said, is that there is no tracing problem because there's
5 only one pot; all that money comes from one source, that being
6 the grant. Therefore, any monies spent are grant money. So I
7 don't know why they would want -- why they need any sort of
8 tracing language in the charge at all.

9 MR. EVERDELL: Because that's case law, your Honor,
10 and that is the case in every Circuit. The cases talk about
11 and in Sand as well, by enacting -- this is the ninth Circuit
12 case Stevens, by enacting Section 666, the general statute, not
13 any particular subsection, Congress plainly decided to protect
14 federal funds by preserving the integrity the entities that
15 received the federal funds rather than requiring the tracing of
16 federal funds to a particular illegal transaction.

17 So this is not -- this applies to the entire statute.
18 Now, the fact that we may not have a particular issue in this
19 case, because of the funds were ATP funds, doesn't matter. The
20 jury should still be instructed on the appropriate law, which
21 is that there is no tracing requirement with this statute. And
22 the statute was specifically enacted to avoid commingling
23 problem that other statutes presented.

24 MR. KWOK: And, your Honor, if I may, I mean the
25 charge we cite in our request to charge, and that's now

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1 reflected in the long version of the fifth element is directly
2 lifted from Sand, the model jury instructions. It's not lifted
3 from (a)(2). It's lifted from the statute that we charge. So
4 I don't know what Mr. Rubinstein's talking about when he refers
5 to his on the spot research.

6 (Pause)

7 MR. RUBINSTEIN: Judge, I'd only point out --

8 THE COURT: I'll have to think about it, Mr -- I'll
9 have to think about it.

10 MR. RUBINSTEIN: Judge, there is another case --

11 THE COURT: Your point, as I see it, is that, okay,
12 it's true that Sand says that, but that applies to an
13 embezzlement case, but it may not apply to misapplication case.

14 MR. RUBINSTEIN: And I would suggest --

15 THE COURT: It seems to be taken from Solantz, which
16 is an embezzlement case, so let me look at it and see if can --

17 MR. RUBINSTEIN: Judge, I hope that this case that I'm
18 going to mention to the Court.

19 THE COURT: -- satisfy myself that there's nothing to
20 your point, but I'll have to -- I'll have to look at it.

21 MR. RUBINSTEIN: Judge --

22 THE COURT: You've got a Rule 29 motion.

23 MR. RUBINSTEIN: Yes. I just wanted to add an
24 additional case that I hope is helpful to the Court, and it's
25 the Second circuit case, it's U.S. versus Thompson, and it's

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1 cited at 484 Fed. 3d, it's 877. And I just -- it's not on all
2 fours, but I think it gives the sense of what we're talking
3 about here. So I know your Honor will take a, more than just a
4 casual look at it.

5 MR. EVERDELL: Your Honor --

6 MR. RUBINSTEIN: As far as -- I'm sorry.

7 MR. EVERDELL: And, your Honor, if I could also direct
8 your attention to the cases in, of our letter in particularly
9 United States V. Neiman, 211 F.3d 40, which I haven't looked at
10 it recently, but although when I wrote the letter, but I seemed
11 to recall that was an (a)(1)(a) case and had some language
12 about traceability, Second Circuit case.

13 THE COURT: My -- it's a not-for-profit part that is
14 what I'm -- the not-for-profit agency as opposed to -- CASI
15 would --

16 MR. KWOK: It is a profit.

17 MR. RUBINSTEIN: For profit.

18 THE COURT: For profit.

19 MR. RUBINSTEIN: CASI was a for profit.

20 THE COURT: Well, the application to a for profit
21 organization controlled by the defendant is what is different
22 than an embezzlement situation and, therefore, I want to just,
23 if there are any cases on that, I'd be interested.

24 MR. EVERDELL: Your Honor, I think --

25 THE COURT: You seem to have a different legal

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1 structure that you're examining in the context of the statute.

2 MR. EVERDELL: Yes, your Honor. I think that the
3 Nieman case may be instructive. If I recall it, I think it
4 involves an organization that received funds and that were
5 misapplied elsewhere and there wasn't the only source of
6 funding that the --

7 THE COURT: That's where we want.

8 MR. EVERDELL: Yeah.

9 MR. RUBINSTEIN: Judge, would you hear me on Rule 29,
10 your Honor?

11 THE COURT: Yes, sir, right away.

12 MR. RUBINSTEIN: Thank you.

13 I think, your Honor, after you've heard all the
14 evidence here, I think it's clear that Dr. Karron had no intent
15 to spend grant monies inappropriately. The system in place
16 permitted review of all expenditures; not only permitted it, it
17 actually encouraged it. And the testimony is clear that when
18 the government is trying to try this case, you had a budget and
19 the budget is your Bible. When, in fact, in science, ATP
20 knows, and everybody, any reasonable person knows that as you
21 start -- as you work on the project, you realize you have
22 different priorities, so that that's why you have to write to
23 change the budget around to do it without any approval
24 whatsoever of the 10 percent, which is really 20 percent
25 because it's down and up, as Mr. Benedict said. And that is

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1 why you have a right to revise the budget after the first year.
2 You could go back and change it all. And so when you have that
3 in mind, and you understand that, and this is stuff that you
4 could negotiate. And even we have evidence that money is
5 carried forward to the next year on occasion, it tells the
6 recipient one thing; as long as you're using the money to
7 advance the project, use it and we'll talk about it.

8 Even in this case, we even have evidence where nothing
9 clearer than utilities, where there's evidence that that's an
10 indirect cost, that there was e-mails back and forth with ATP
11 suggesting that ATP would absorb the difference in the
12 utilities expenditures over what it had been in the past. Why
13 else would they be asking for bills to show the difference in
14 the expenditure?

15 So -- and the CFR says that they judge these things on
16 a case-by-case basis. And nowhere -- when you take that,
17 together with the fact that there's evidence here that Dr.
18 Karron having repairs to his -- having work done, construction
19 work done in his home, paid for work done in the kitchen with a
20 personal check, work done in the living room with a CASH check,
21 that that shows the intent. The fact that the government could
22 point to things that might have been a mistake or might have
23 been items that a blind bookkeeper would reallocate? Their
24 argument is that because he resisted, Dr. K resisted the
25 opinions of people like Benedict and Springs, and maybe even

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1 Hayes, that, therefore, he misappropriated funds.

2 I submit to your Honor that that doesn't show
3 intention at all. As a matter of fact, the conversations were
4 from Benedict; well, if I owe them money, I have a rich mother,
5 I'll pay them back.

6 So that all goes to the issue of intent, which I think
7 that the government has woefully failed to establish in this
8 case, without getting into the nitty-gritty about what money
9 was spent, where nobody is contesting that there was work done
10 on the grant. And so the main areas are rent, which your Honor
11 may recall most of the rent was back due rent. So, technically
12 speaking, that was not rent attributable to the grant period.
13 So, therefore, it shouldn't be considered as a violation of
14 taking an indirect amount. Because it was for 2000 and 2001
15 pre-grant, most of the money.

16 And additionally, the defendant had a right to move
17 10 percent increase in salary, which would've moved his salary
18 up by \$80,000 to \$255,000, and he could absorb it on that
19 level. So that's even without getting approval, to have a
20 budget, a budget change.

21 So it just seems to me, your Honor, that all the
22 evidence here, there is no, no proof that Dr. Karron intended
23 to do anything to the contrary. We have receipts. He scanned
24 every document. He had back up for every document. You know,
25 they opened that he made changes in the computer. But what did

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1 he change, how you classify an expense? He never changed an
2 invoice, he never changed a check. He never looked to delete
3 anything. And we have uncontroverted evidence here from the
4 Government's own witness that Dr. Karron is an incompetent
5 manager. He stands up at the CASI -- at a government meeting
6 dealing with grants and says, I need help with financial
7 guidance about a grant, all right. Everybody testified that in
8 the early part of the grant, Dr. Karron was taking care of the
9 books. And what is the -- the indisputed testimony? That the
10 books were in horrific conditions when the Jackson Group and
11 Springs came aboard, and they had to redo the entire, the
12 entire books.

13 The one thing that was consistent was that we had
14 checks, every check that was written there was an invoice for.
15 So I submit to your Honor that there's absolutely no basis to
16 consider that Dr. Karron intended to do anything wrong, and
17 that their whole theory of this case is misguided.

18 THE COURT: Well, the problem is that generally the
19 issue of criminal intent is an issue for the jury, and if
20 there's any basis for the jury to draw such a conclusion, I've
21 got to leave it to the jury.

22 Here, the grant was made a few weeks after they
23 attended a kickoff meeting. I gather the money came in a few
24 weeks after they attended the kickoff meeting, what's called a
25 kickoff meeting. And at the kickoff meeting there were certain

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1 exhibits and rules that were laid down to the recipient. And
2 the terms, the standard terms and conditions were set forth.
3 And they had a slide show to advise the recipients of the
4 nature of the agreement so that those people who were less than
5 avid of terms of conditions would be alerted to the necessary
6 items.

7 And as I understood the testimony, that they were
8 not -- they were not to spend any money for rent and utilities.
9 And I thought that appeared on one of the slides -- and I may
10 be wrong. And that then they had to get prior approvals for
11 certain types of expenditures.

12 Well, the first thing that happens is that the money
13 comes in -- I've forgotten whether it was \$150,000 or something
14 like that. The defendant takes that check -- takes that money,
15 deposits it in CASI, then draws himself a check for 75,000 and
16 then proceeds to --

17 MR. RUBINSTEIN: Judge --

18 THE COURT: -- draw other checks in payment of the
19 back rent.

20 MR. RUBINSTEIN: Judge, your time line --

21 THE COURT: For some, for some \$36,000.

22 MR. RUBINSTEIN: The time line is off, Judge.

23 THE COURT: What?

24 MR. RUBINSTEIN: Your time line is off. The money --

25 THE COURT: Time line is off?

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1 MR. RUBINSTEIN: Yes. The money came in in October, I
2 think October 25th.

3 THE COURT: Right.

4 MR. RUBINSTEIN: The kickoff and the money was
5 withdrawn --

6 THE COURT: The kickoff --

7 MR. RUBINSTEIN: Was August, was November 8th, 2001.
8 So the money was withdrawn prior to the time of the kickoff,
9 so --

10 THE COURT: Well --

11 MR. RUBINSTEIN: That's my recollection --

12 THE COURT: I don't know. But --

13 MR. RUBINSTEIN: -- of the evidence.

14 THE COURT: You may be right. My recollection was
15 that the kickoff was in October, but I may be wrong. And I
16 notice that the last witness indicated that the kickoff was in
17 October where he met Dr. Karron.

18 MR. RUBINSTEIN: He wasn't at the kickoff, Judge.
19 Benedict was not at the kickoff. He testified that he was
20 not -- he was not aboard. He said he was at a conference where
21 he met -- that's when he met Dr. Karron.

22 THE COURT: Well, I thought he said at one point he
23 was at a conference, but then he called it kickoff also. I may
24 be wrong.

25 MR. RUBINSTEIN: The testimony is that the people at

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1 the kickoff, besides the ATP people, were Dr. Karron, Gurfein
2 and somebody whose name starts with an S, Dr. Satava.

3 THE COURT: Well, the point I'm making is that soon --
4 I believe they may have had such a meeting. I'd have to go
5 back to my notes and look at it. I will go back to them.
6 Exhibit 2 mentions a kickoff. I don't seem to have a date.

7 Then I believe that that was all before the money was
8 sent, but after the award was announced, and then the money
9 comes in and these payments were made out. But I'd have to go
10 back to the actual record. There was another meeting in
11 November.

12 MR. EVERDELL: Your Honor, regardless --

13 THE COURT: It was testified to where he discussed
14 changes in the equipment budget. Those are just my notes. I
15 may be wrong.

16 So, I mean they could draw an inference from that, it
17 seems to me, that he deliberately decided not to abide by the
18 agreement, for reasons of his own, or by the grant terms
19 agreements of its own and without getting -- and without
20 getting any prior approval, and that's enough for a jury to
21 determine that he was acting intentionally and knowingly.

22 Let me see if maybe the dates will be in your
23 cross-examination.

24 MR. KWOK: Your Honor, if I may, I think if I recall
25 the testimony correctly, I think Mr. Rubinstein is right, in

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1 that the kickoff meeting in this case happened after the funds
2 were made available.

3 THE COURT: All right.

4 MR. KWOK: But in the end it doesn't matter, because I
5 think there's testimony also that these conversations about
6 rent and utilities happened at the proposers meeting, even
7 before the kickoff meeting, Lee Gerfein and Dr. Karron called
8 Hope Snowden to talk about rent. And so when Ms. Snowden went
9 to the kickoff meeting, the same conversations happened and --

10 THE COURT: What about this Ms. Lide, Betti whatever
11 her name was, Betti --

12 MR. KWOK: Betti Joyce Lide. She also testified that
13 she spoke to the defendant and the defendant's business manager
14 about the same topic.

15 THE COURT: When?

16 MR. KWOK: Of rent.

17 THE COURT: When?

18 MR. KWOK: Rent, exactly correct. When? I believe
19 she testified that it was at the end of 2001.

20 THE COURT: When?

21 MR. EVERDELL: I believe she testified -- I believe
22 she testified it was sometime in 2001. I don't know --

23 THE COURT: Sometime in 2001?

24 MR. EVERDELL: I'd have to check that.

25 THE COURT: Before the grant?

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1 MR. EVERDELL: Your Honor, the conversations that I
2 think are particularly relevant here are the ones with Hope
3 Snowden, who testified particularly that even before the grant
4 was awarded that she had conversations with the defendant and
5 Lee Gerfein about rent and not being allowed allowable, and
6 again had conversations with them after the grant was awarded
7 and at the kickoff meeting, and all these conversations
8 happened before these funds were drawn down, and rents started
9 to get paid with funds. So he was on notice.

10 THE COURT: It wasn't at the kickoff meeting, but
11 there was another meeting, is that your --

12 MR. EVERDELL: There is a proposers meeting before the
13 kickoff meeting, when people who want to write proposals for
14 the CASI grant -- sorry -- for the ATP grant go and they get
15 educated on what the rules are, and that happened well before
16 the grant was awarded.

17 THE COURT: I guess I'm talking about the proposers.

18 MR. EVERDELL: I think so.

19 MR. RUBINSTEIN: I don't think Snowden was -- my
20 recollection Ms. Snowden wasn't at --

21 THE COURT: I didn't think.

22 MR. RUBINSTEIN: That --

23 THE COURT: I don't think she was at it. I thought
24 only Lide and some other women were at it.

25 MR. EVERDELL: That's right. I don't think -- I don't

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1 think Ms. Snowden -- well, I don't think there's testimony Ms.
2 Snowden was at the proposers meeting, but she had conversations
3 with the defendant himself and with doctor --

4 THE COURT: No, but those are -- I mean, you can fix
5 dates, but you have this problem of acting knowingly and
6 intentionally in violation of the grant terms.

7 MR. EVERDELL: That's right.

8 THE COURT: That's a problem.

9 MR. EVERDELL: And the conversation was can we use
10 rent -- or can we use ATP funds to pay for rent an. She said
11 absolutely not.

12 THE COURT: If the horse was already out of the barn,
13 it doesn't go to intent.

14 MR. EVERDELL: The horse wasn't already out of the
15 barn. These conversations happened before the grant funds
16 started getting drawn down and before the rent payment were
17 getting paid.

18 THE COURT: I don't know whether they did or didn't,
19 at this point.

20 MR. EVERDELL: Her testimony was that it happened
21 before the grant was even awarded, and the first drawdown is, I
22 believe --

23 THE COURT: That was my recollection, but --

24 MR. RUBINSTEIN: That can't possibly be, your Honor,
25 because they testified that this was -- Snowden particularly --

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1 that nobody would know that they had the grant until they
2 received official notification and, therefore -- so the
3 government is, I submit, is a little -- is inaccurate.

4 MR. EVERDELL: It doesn't prevent them from calling.

5 THE COURT: I haven't got any citation to the evidence
6 before me. No one provided me with that. And --

7 MR. EVERDELL: It's also -- your Honor, the testimony
8 of Hope Snowden is that she had numerous conversations with the
9 defendant and Lee Gerfein remember between the time that the
10 grant was awarded and the day of the kickoff meeting about rent
11 utilities. The first drawdown funds, I believe, was
12 October 26. The grant awarded on 4th of October, backdated
13 effective as of October 1st, but she had these conversations
14 with the defendant before the fund are even drawn down. And
15 plus the fact --

16 THE COURT: Where is that in the record?

17 MR. EVERDELL: It's 254 to 259 and 303 to 04. And,
18 your Honor, adding to that, is that these rent checks --

19 THE COURT: I've got to find a date. Where is the
20 date?

21 MR. EVERDELL: I think it should be on 254 to 259,
22 those pages.

23 THE COURT: 254?

24 MR. EVERDELL: Of the transcript.

25 THE COURT: I have the wrong book. I asked for dates.

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1 That -- 254 is the day of the kickoff meeting, which is in
2 November.

3 MR. EVERDELL: And I believe the question was
4 something like, do you have any conversations before the
5 kickoff meeting with --

6 THE COURT: Well, where is that?

7 MR. EVERDELL: I think it's in one --

8 THE COURT: Wait a minute. I got something prior
9 to -- yes, yes. Let me see. 254.

10 MR. EVERDELL: Through 259 and 303.

11 THE COURT: Just a second let me --

12 MR. EVERDELL: Yes, your Honor.

13 (Pause)

14 THE COURT: It doesn't give a date. It doesn't give a
15 date. I can't find any date in there.

16 MR. EVERDELL: Your Honor, I don't know if Ms. Snowden
17 remembered the exact date when she had the conversations, but
18 she said --

19 THE COURT: But it doesn't have any date, any
20 reference date in that page.

21 MR. EVERDELL: Your Honor, I think the timeframe we're
22 talking about here --

23 THE COURT: Wait a minute, wait a minute. I think I
24 may have found one on 257.

25 MR. EVERDELL: Okay.

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1 THE COURT: In October. This is right after he was
2 told that he received the documents that he would be receiving
3 this federal fund.

4 MR. EVERDELL: Right.

5 THE COURT: Then it continued.

6 MR. EVERDELL: Which is the grant's awarded on --

7 THE COURT: That conversation -- let me just see who
8 this is with. This does seem to be with the defendant. I
9 think there was mention of Gurfein there in the question. And
10 that does involve rent and utilities.

11 MR. EVERDELL: That's correct, your Honor. So she's
12 having conversations, actually multiple conversations with both
13 the defendant and Lee Gerfein before the funds are being drawn
14 down in October of 2001, telling him specifically you can't use
15 ATP funds to pay for rent, utilities.

16 And furthermore, your Honor, if you look at the spread
17 sheets, these rent payments were paid out over the course of
18 several months, even after the initial drawdown. So these
19 conversation he's having with --

20 THE COURT: 258 is the discussion. I thought there
21 was something from Ms. Lide also.

22 Well, that seems to cover the rent and utility, and
23 that seems to raise the issue of the defendant's intent, so I
24 have to deny the motion. That's what I got to do.

25 All right, anything further? No word on --

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1 MR. EVERDELL: No, your Honor. The appeals
2 division -- sorry, your Honor. The appeals division wasn't
3 able to find anything applicable, so I think we'll just stay
4 with what we have.

5 THE COURT: All right. I might come up with
6 something. I'll look at a few things. I want to look at Mr.
7 Rubinstein's case that he referred me to. And you referred me
8 to U.S. versus Thompson.

9 MR. EVERDELL: I referred you to U.S. versus Nieman.

10 THE COURT: Nieman, 211 Fed. 3d. He wants me to look
11 at U.S. versus Thompson.

12 MR. EVERDELL: Correct. Mine's 211 F.3d, 40.

13 THE COURT: Yeah, I've got that.

14 MR. EVERDELL: Thank you, your Honor.

15 THE COURT: Okay.

16 MR. RUBINSTEIN: Thank you very much, your Honor.

17 MR. KWOK: Thank you, your Honor.

18 THE COURT: All right, work hard on your summation.

19 MR. EVERDELL: I will, your Honor.

20 MR. KWOK: Certainly, your Honor.

21 THE COURT: Work hard on your summations all night.
22 Be here at 9:30 in the morning.

23 MR. KWOK: Thank you, your Honor.

24 MR. EVERDELL: Thank you, your Honor.

25 (Adjourned to June 11, 2008 at 9:30 a.m.)

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1 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. S2 07 CR 541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.

7 -----x

8

 June 11, 2008
9 9:2 a.m.

10

 Before:

11

 HON. ROBERT P. PATTERSON, JR.,

12

 District Judge

13

14 APPEARANCES

15 MICHAEL J. GARCIA
 United States Attorney for the
16 Southern District of New York
 BY: STEVEN KWOK
17 CHRISTIAN EVERDELL
 Assistant United States Attorneys
18
 RUBINSTEIN & COROZZO, LLP
19 Attorneys for Defendant
 BY: RONALD RUBINSTEIN
20 WILLIAM DiCENZO

21
 Also Present: Rachel Ondrik, U.S. Dept. of Commerce
22 Kirk Yamatani, U.S. Dept. of Commerce

23

24

25

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1 (Trial resumed; jury not present)

2 THE COURT: If Mr. Rubinstein isn't here, and I think
3 it's important that both sides check either side's exhibits and
4 make sure they are the exhibits admitted in evidence. Mr.
5 Rubinstein nor his associate is here. So he better get in
6 here, Robert. We've got to make sure those exhibits are
7 correct.

8 They were offered in evidence and they were admitted
9 in and not for identification.

10 MR. KWOK: Certainly, your Honor.

11 THE COURT: Is he outside, the associate?

12 MR. EVERDELL: I could go check, your Honor.

13 THE COURT: Because he should be checking your
14 exhibits.

15 Robert, would you get Mr. Rubinstein's associate.

16 THE DEPUTY CLERK: He was in the bathroom a second
17 ago.

18 THE COURT: Oh.

19 (Mr. DiCenzo now present)

20 THE COURT: Mr. Rubinstein isn't here, but -- I've
21 forgot your name.

22 MR. DiCENZO: William.

23 THE COURT: You'll have to check the Government's
24 exhibits to be sure that they're exhibits admitted in evidence
25 and they have to examine your exhibits to be sure they were

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1 admitted in evidence, and not just for identification.

2 MR. DiCENZO: Okay. I had --

3 THE COURT: Because we don't want to something arise
4 during summations where they say, oh, that wasn't admitted in
5 evidence and you say oh, or Mr. Rubinstein says that wasn't
6 admitted in evidence, so.

7 MR. DiCENZO: It was -- there was one small, I think
8 it's defense exhibit Q that was a question whether it was
9 admitted in evidence. I wanted to check the record. I'll show
10 it to you.

11 THE COURT: When was it offered?

12 THE DEPUTY CLERK: June 6th, I think.

13 THE COURT: I can look at my notes, but it would help
14 if when it was offered, maybe I could help you. Take it up
15 with the government. Maybe they have no objection to it. I
16 don't know. I have to see Q -- show it to them. Show them Q.
17 Show them Q and they can determine whether they have an
18 objection. I've forgotten what Q was.

19 MR. KWOK: I think it's a chain of e-mails, your
20 Honor, relating to Frank Spring.

21 THE COURT: Relating to what?

22 MR. KWOK: Frank Spring, the government witness with a
23 slight British accent.

24 THE COURT: Here's Mr. Rubinstein.

25 THE DEPUTY CLERK: It was part of 3507.

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1 THE COURT: Oh, all right.

2 THE DEPUTY CLERK: Part of 3507.

3 THE COURT: 3507 is about 3 inches thick.

4 (Mr. Rubinstein now present)

5 THE DEPUTY CLERK: I had it as bottom of page two, all
6 of page three and then the top of page four. That's the note
7 that I had on what it actually was from all those documents,
8 but I never actually saw that exhibit was --

9 THE COURT: Do your records show it was admitted?

10 THE DEPUTY CLERK: No. I have it the -- last thing I
11 have was that you were saying that it should be -- as to what
12 it should be, but it was never actually said it was admitted,
13 but discussion was exactly what it was supposed to be.

14 THE COURT: It may have just been done to refresh his
15 recollection.

16 What page was it? What page was it on?

17 THE DEPUTY CLERK: 885.

18 THE COURT: My record is where?

19 THE DEPUTY CLERK: Is that it, June 6th?

20 THE COURT: I don't believe so. This is 11.

21 THE DEPUTY CLERK: Today's, they have it.

22 THE COURT: Was it used just to refresh recollection
23 or was it --

24 MR. KWOK: I think it was to -- we're looking right
25 now. He didn't recollect the subject of the e-mail that was

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1 shown to him, and it was not actually admitted -- there was
2 actually an objection lodged.

3 THE COURT: I saw the objection, but I didn't know
4 whether -- what happened.

5 MR. EVERDELL: It doesn't look like it was ever
6 admitted.

7 THE COURT: It was used just to refresh recollection.

8 MR. KWOK: I think that's fair.

9 MR. EVERDELL: Yeah.

10 MR. DiCENZO: I think I it was like going to be
11 admitted and then questioned is it the whole page, not the
12 whole page, and then they objected and they -- there was no
13 further dialogue with the Court on whether it was admitted or
14 it wasn't admitted.

15 THE COURT: I don't remember the subject matter.

16 MR. EVERDELL: He says, "I don't recollect, your
17 Honor."

18 THE COURT: Ask Mr. Rubinstein. Exhibit Q, Mr.
19 Rubinstein, for identification or was it admitted? I think it
20 was used to refresh recollection.

21 MR. RUBINSTEIN: Who is the witness?

22 MR. EVERDELL: Spring.

23 MR. RUBINSTEIN: I think it was used to refresh
24 recollection.

25 MR. EVERDELL: I don't think it's admitted.

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1 THE COURT: Well, then it isn't -- it's for
2 identification only, Mr. William.

3 MR. EVERDELL: So no Q, right.

4 THE COURT: Before you came, Mr. Rubinstein, I asked
5 both sides to check the other's exhibits so that we don't have
6 a dispute in the middle of summations as to whether something's
7 admitted or not.

8 MR. RUBINSTEIN: Absolutely, Judge. Mr. DiCenzo is
9 fine. Mr. Kwok saw me in my new work place hiding from
10 everybody I commandeered the cafeteria. The back wall has a
11 very nice ledge, I don't have to hurt my back, and I can spread
12 my papers out.

13 THE COURT: Okay. Are you all through?

14 THE DEPUTY CLERK: Did that work out with your
15 exhibits?

16 MR. KWOK: Yes, with one minor change. I think we'll
17 just admit it by stipulation?

18 THE DEPUTY CLERK: Okay. Which one?

19 MR. KWOK: 104.

20 THE DEPUTY CLERK: Okay.

21 THE COURT: What is 104?

22 MR. KWOK: 104 is an invoice, your Honor, that was
23 admitted by stipulation.

24 THE COURT: Each expect to take what, 40 minutes?

25 MR. RUBINSTEIN: Pardon?

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1 THE COURT: Summations, 40 minutes?

2 MR. KWOK: For me I think around that neighborhood.

3 MR. RUBINSTEIN: I seriously doubt that, your Honor.

4 THE COURT: What?

5 MR. RUBINSTEIN: I would think an hour and a half.

6 THE COURT: It's awful long.

7 MR. RUBINSTEIN: Actually it's probably the second

8 shortest summation, maybe the third shortest summation that

9 I've ever planned. I don't even think I have one full redwell.

10 THE COURT: Well, I'll remind you throughout the --

11 MR. RUBINSTEIN: Okay.

12 THE COURT: Where you are. But an hour and a half,

13 you're going to put people to sleep. I don't think if you take

14 40 minutes, I don't think you need to take more than an hour.

15 We have rebuttal. If that means I've got to give the

16 government a longer rebuttal, I don't want to give the

17 government a longer rebuttal. I don't want the government --

18 an hour and a half would mean the government would probably

19 have to engage in a half-hour or so of rebuttal instead of 10

20 or 15 minutes at the most.

21 MR. RUBINSTEIN: Well, I'll try and cut it down to an

22 hour, Judge.

23 THE COURT: All right.

24 MR. EVERDELL: Do I have time to run to the restroom?

25 THE COURT: Excuse me?

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1 MR. EVERDELL: Do I have --

2 THE COURT: Of course. Let me see if there's anything
3 else that we ought to take up. I wanted to take up the small
4 changes I made in the charge after our conference.

5 MR. EVERDELL: Okay.

6 THE COURT: You want to take those up now?

7 MR. KWOK: Sure, we can take those up now.

8 MR. EVERDELL: All right, then I'll --

9 THE COURT: I've handed out a copy of the charge, I
10 believe you've got it. And I, on the tracing, I added in, to
11 that section, money is fungible and the government need not
12 trace back.

13 MR. EVERDELL: This is in element five?

14 THE COURT: On page 22. On page -- I don't think page
15 11 need discussion about government employee. You're aware of
16 that.

17 On page 17 we took the overall description of the
18 indictment and made it consistent with the latter part of the
19 charge, saying that intentionally misapplied \$5,000 and more in
20 the care, custody and control of CASI, while it was the
21 beneficiary of a federal grant of more than \$10,000 a year.

22 I think those are the only changes. You might look at
23 the section having to do, on page 23, having to do with
24 tracing; otherwise, it's as we agreed.

25 All right, why don't you take your break.

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1 MR. KWOK: Thank you, your Honor.

2 MR. EVERDELL: Thank you.

3 (Recess)

4 (Jury entering)

5 THE COURT: All right, please be seated.

6 Ladies and gentlemen, we're about to hear -- ladies
7 and gentlemen, we're about to hear the summations of counsel.
8 You're reminded that summations of counsel are not evidence.
9 You have the evidence before you in the form of the testimony
10 and the exhibits received in evidence and the stipulations, but
11 summations can be a help to the jury and help their thinking in
12 terms of their review of the evidence. That's what summations
13 are for.

14 So you'll first hear from the government, and then
15 you'll hear from the defense, and then the government gets a
16 short rebuttal. So we'll start with Mr. Kwok and then hear
17 from Mr. Rubinstein and, I don't know, Mr. Everdell or Mr.
18 Kwok -- Mr. Everdell, you're going to do the rebuttal.

19 Mr. Kwok.

20 MR. KWOK: Thank you, your Honor.

21 For a year and a half, Daniel B-Karron, the defendant,
22 cheated the government for over half a million dollars. He
23 cheated a program that supported him and his company, ATP, the
24 Advanced Technology Program that supports high risk scientific
25 research. The rules were clear and simple, and Dr. Karron knew

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Summation - Mr. Kwok

1 what they were; expenses not included in approved budget could
2 not be paid for with grant money. But the defendant just
3 didn't care. He said he could do whatever he wanted, and
4 that's exactly what he did. He treated the grant like his own
5 personal piggy bank. He wouldn't take no for an answer.

6 Before the grant was shut down, the defendant used
7 taxpayers money to pay mortgage on his condo, a cleaning lady,
8 medical procedures and household items like this blender, this
9 GPS system, and these power tools. All told, the defendant
10 misapplied about half of the \$1.3 million his company CASI got.

11 When this trial began, the government told you that
12 the evidence would prove to you, beyond a reasonable doubt,
13 that the defendant is guilty of the crime charged in the
14 indictment. The evidence is now in, and that's exactly what it
15 shows.

16 First, take a look at what is not in dispute in this
17 trial. At the close of this case Judge Patterson will instruct
18 you on the law. It is his instructions that control. I expect
19 that you will learn that in order to find the defendant guilty,
20 the first thing that you have to do is to decide whether he was
21 an agent of Computer Aided Surgery, Inc. or CASI. There is no
22 dispute that the defendant was the president and the chief
23 technical officer of CASI. How do you know? You know from the
24 documents the defendant signed in his capacity as president and
25 C. T. O. There's no dispute about any of these documents.

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Summation - Mr. Kwok

1 Let's look at government exhibit 10A. That's the application
2 the defendant submitted to apply for the grant. D. B. Karron
3 Ph.D., chief technical officer, Computer Aided Surgery, Inc
4 government exhibit 12 is the government document defendant
5 submitted as president agreeing to comply with the award
6 provisions.

7 Dr. Karron also submitted this letter, government
8 exhibit 21, again as CASI's president and chief technical
9 officer, saying that his business manager Lee Gerfein had no
10 authority to sign for or commit CASI financially.

11 In addition to finding that the defendant was an agent
12 of CASI, I expect Judge Patterson will also tell you that you
13 also have to decide whether CASI received federal funds in
14 excess of \$10,000 during a one year period. There's also no
15 dispute about that.

16 You heard the uncontradicted testimony of Betti Joyce
17 Lide, the first witness who came before you. She was one of
18 the true project managers for the grant. And Ms. Lide told you
19 that CASI got \$800,000 during year one of the grant. And she
20 told you CASI got about half a million dollars in year two
21 before the grant was shut down.

22 Hope Snowden and Belinda Riley both told you the same
23 thing.

24 So, ladies and gentlemen, what is in dispute in this
25 trial? It all comes down to this: Whether the defendant

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Summation - Mr. Kwok

1 intentionally misapplied \$5,000 or more of funds under CASI's
2 control to pay for unauthorized expenses. Before I turn to the
3 defendant's intent, let's go through the evidence before you
4 that shows you that the defendant did in fact misapply \$5,000
5 or more in funds under CASI's control.

6 Now, there are a lot of numbers being thrown around in
7 this trial, because huge sums of money are involved. But when
8 you get down to it, the misapplication of funds is very simple.
9 The grant specialist, Ms. Snowden, told you that the rules
10 under the ATP program are simple. She testified that she told
11 award recipients, including Dr. Karron, that your award budget
12 is like your Bible; you must follow the budget unless you get
13 advanced written approval to change it. Items that don't fall
14 under any approved categories in the budget can't be paid for
15 using grant money. It is that simple. Even for things that
16 can be paid for with grant money in theory, you need written
17 approval if you spent more than what is allowed in the budget,
18 unless the change is small, defined as any amount less than
19 10 percent of the annual total budget.

20 So how did actual spending at CASI stack up against
21 that approved budget at CASI? Now, there really is no serious
22 dispute about how CASI spent its money, because all of the
23 transactions are documented in bank records and credit card
24 statements. Witnesses may get flustered, they may not be able
25 to do math on the stand, they may get nervous, but approved

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Summation - Mr. Kwok

1 budget and the cold hard numbers in these financial statements,
2 they speak for themselves.

3 Now you heard about audits in this case. Audits are
4 nothing more than a sample testing based on the company's books
5 and records. They're subject to change as the company's
6 records change. These audits aren't perfect, especially when
7 the company books were a mess and the government already
8 auditor, Ms. Riley, told you that herself.

9 But you don't have to rely on Ms. Riley's or on anyone
10 else's audits in this case, because the government has put
11 before you bank records, credit card statements, and vendor
12 invoices showing exactly where the money that came into CASI
13 came from, and where that money went. There is no guesswork
14 involved in this case.

15 Now, in his cross-examination, defense counsel kept
16 referring to different sets of books kept at CASI at different
17 times by different people, and these changing books make it
18 seem as though it's cetera impossible to tell what really went
19 on. Ladies and gentlemen, that's a red herring. None of that
20 matters. Those financial records don't depend on what CASI's
21 books say or don't say. These records come directly from the
22 banks and from the credit card company showing exactly where
23 the money went.

24 Now, to help you review these records, Ms. Riley
25 created a spread sheet, that spread sheet, government Exhibit

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Summation - Mr. Kwok

1 110, showing exactly what went on in CASI's business accounts.
2 So let's go through some examples to show you how that spread
3 sheet works.
4 Now, here's a page from government exhibit 90, the
5 American Express credit card statements issued to CASI for the
6 defendant's use. The list of transactions on this page and on
7 the following pages are transactions made under the name of
8 Dr. D. B. Karron. It says that right there on the page. As an
9 example, take a look at page three of this monthly statement
10 and find November 29th, 2002. There was a charge for \$13.91 at
11 Starbucks Coffee, New York. Now, that information is reflected
12 in the spread sheet Ms. Riley created, government Exhibit 110,
13 page 25 of 37; Starbucks Coffee, \$13.91. As another example,
14 let's go to December 3rd, 2002 of the credit card statement.
15 Dr. Karron went to IHop, and incurred a charge of \$33.84 in
16 Arlington, Virginia. That information is once again reflected
17 in Ms. Riley's spread sheet, page 23 of 37, IHop, for \$33.94.
18 As a last example, let's go to page three of the credit card
19 statement. Dr. Karron went to an Indian restaurant in New York
20 and incurred a charge of \$107.75. Again, that information is
21 reflected in Ms. Riley's spread sheet, government exhibit 110
22 again, page 25 of 37. The Indian restaurant, the price,
23 \$107.25. Now, let's go to the first page of that credit card
24 statement this page shows that the charges we just talked
25 about, as well as all the charges during this month, total up

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Summation - Mr. Kwok

1 to around \$1,450.30. And how's that paid for? So let's go to
2 the data base and see. Let's go to government Exhibit 110
3 again, page three of 37. There is an entry showing CASI made a
4 payment to American Express, minus \$1,450.30 cents. Right
5 there. But don't just take Ms. Riley's word for it. Check her
6 work against the bank statements from Chase Bank. So let's
7 pull that up, government exhibit 81 for the December 21st,
8 2002, to January 23rd, 2003 period, page three of four. Here
9 it is. December 30th, American Express, \$1,450.30. And what
10 money went into this Chase account? Let's go to the first page
11 of the same exhibit. There it is, let's zoom that in. ATP
12 grant, 12/31, 20K; January 10th, 20K, January 22nd, 28K. And
13 Ms. Riley put that information on her spread sheets. Let's go
14 back to Ms. Riley's spread sheet, let's zoom that in, right
15 there. 20K, 20K, 28K on the dates that I just referred to.
16 But Ms. Riley didn't just put into this spread sheet money
17 coming in from the ATP. Where there was money coming from
18 elsewhere, Ms. Riley put that in as well. You remember when
19 Ms. Riley was up on that witness stand, Mr. Rubinstein waived
20 around these cancelled checks, government exhibit -- defense
21 exhibit FFF to show that Dr. Karron put his money into CASI.
22 It's not clear what the point of all that was, but one thing is
23 certain, if the point was to show that Ms. Riley made a
24 mistake, that didn't work. There was no Perry Mason moment
25 there, because all of this information is reflected in Ms.